

SOUTH AFRICA / JUDGMENT

Dlamini v Sesele (A250/2009) [2010] ZAFSHC 104 (23 September 2010)

[2010] ZAFSHC 104

COURT

Free State High Court, Bloemfontein

BEFORE

Rampai, Van Zyl

CASE / FILE NUMBER

A250/2009

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FREE STATE HIGH

COURT, BLOEMFONTEIN

REPUBLIC OF SOUTH

AFRICA

Appeal No. : A250/2009

In the matter between:-

MOTSAMAI CHARLES

DLAMINIAppellant

and

MOEKETSI BASIL

SESELERespondent

CORAM:

RAMPAI, J et VAN

ZYL, J

HEARD

ON: 23 AUGUST 2010

JUDGMENT

BY: RAMPAI, J

DELIVERED ON: 23 SEPTEMBER 2010

- [1] These are appeal proceedings. The appellant is a school teacher and the respondent a school management developer. In what follows I shall refer to the respondent as the plaintiff and the appellant as the defendant. In the Kroonstad District Court the plaintiff sued the defendant for damages in the sum of R40 000,00. The defendant resisted the action.
- [2] In the end the plaintiff succeeded in his action against the defendant. The trial magistrate (Mr. I. Redelinghuys) ordered the defendant to pay damages in the sum of R40 000,00 interest thereon and costs. It was against this order the defendant came on appeal to this court.
- [3] The evidence adduced at the trial is not explored at some length in the judgment. A summary of the material facts of the case will be helpful for the appeal purposes. The hearing was on 25 August 2003. Mr. Swanepoel, a local attorney, represented the plaintiff and Mr. Kruger, a local attorney, represented the defendant.
- [4] First, the undisputed facts. Here I include facts which, though not admitted, were nonetheless not seriously disputed. The plaintiff was in the employ of the Department of Education and Training. He was a school management developer attached to the Kroonstad District Office. His post matric academic qualifications included a three year diploma training course – a bachelor's degree and honours degree (B.A. Hon.). At the time of the trial he was busy with a master's degree. His wife was a teacher by profession. He was a father of two minor children.
- [5] The plaintiff was responsible for the managerial development of a number of schools in the Northern Free State. Among them was a school known as Makhetha Secondary School at Phomolong in Kroonstad. The defendant was one of the teachers at that particular school. He was also the representative of the South African Democratic Teachers Union (SADTU) at the school. He preferred Mr. Mojaki to Mr. Maloka as the principal.
- [6] For sometime the school did not have a principal. The vacant post was advertised, applications from interested teachers were received, short-listing was done and interviews were held. Among the applicants were teachers at the same school. Some of them were even shortlisted. Whether Mr. Mojaki was one of them does not appear from the record, but probably was.
- [7] Apparently the interviews were held in August 2001. The interviews of the candidates on the shortlist were conducted by a selection panel delegated by the school governing body (SGB). The SGB consisted of a certain number of teachers, parents and learners who represented such interest groups at a particular school. The selection panel submitted its selection report to the SGB after the interviews. The SGB recommended the name of three candidates to the departmental head office in Bloemfontein via the district office at Kroonstad.
- [8] The director-general of the department made the final appointment of a certain Mr. Philip Maloka from the three recommended finalists, as the principal of the school. The appointment was done during September 2001. The plaintiff was not involved in the short-

listing or the interview of the candidate or the selection of the finalists or the final appointment of the principal. At that time he was not yet attached to the school as its school management developer. About a month later, during October 2001, the plaintiff became the school management developer of the same school. There were already problems there.

- [9] The SGB, which was responsible for the recommendation of Mr. Maloka as the principal, was replaced by the new SGB. The latter had problems with Mr. Maloka. A number of grievances by the parents, the learners and teachers were sent to the department about the principal. On 17 January 2002 the plaintiff received an undated letter from 13 school teachers – exhibit “A”. They advised him that, pending the outcome of the dispute, which they did not specify, they had resolved to obey the instructions of a certain Mr. Mojaki, the deputy principal, only.
- [10] Implicitly the teachers concerned informed the department via the school developer that they no longer recognised the authority of Mr. Maloka as the principal. Seemingly three other teachers, including the principal, did not sign the grievance. The defendant’s name was on the list (exhibit “A”) as the second signatory.
- [11] The very next day, on 18 January 2002, the plaintiff went to the school to defuse the volatile situation. He went over there in response to the grievance of the teachers – exhibit “A”. He invited three members of the SGB to attend the meeting with him. They were Ms Noge, Mr. Rapulungoana and Mr. Maloka. There were several teachers at the meeting. Besides the plaintiff, there were about 18 to 20 people all in all. Among the teachers, who spoke at the meeting, were Mr. T.J. Chere and Mr. M.C. Dlamini, the defendant. The meeting came to an abrupt end after the appellant and the respondent had exchanged some words. The proceedings at the meeting were not minuted. Mr. Mojaki was a deputy principal at the time.
- [12] Subsequent to the meeting, the school was plagued by endless problems. The situation worsened and rapidly deteriorated. It was that deepening crisis at the school which eventually forced the department to shut it down and to transfer its teachers to different other schools. Amid all that turmoil, the plaintiff gave up his 15 year career in the field of education on 30 April
2002. He subsequently became the mayor of Sasolburg. Similarly he was still holding that position at the time of the trial.
- [13] There were a few disputed factual allegations as well; the role, if any, played by the plaintiff in the appointment of Mr. Maloka as the principal; the words used or the statement made by the defendant at a meeting; the impact of such words on the plaintiff’s reputation and dignity; the damages, if any, the plaintiff suffered as a result of the alleged words; the defendant’s intention and the relationship between the plaintiff and the principal, Mr. Maloka.

- [14] The plaintiff's case was that, the manner in which he was treated by the defendant at the meeting, invoked an aggression upon his person and that, the stated remarks publicly attributed to him, constituted a wrongful and actionable infraction of his fundamental personality rights. He asserted that the alleged statement allegedly uttered by the defendant portrayed him as an official with a foul reputation, who lacked the necessary integrity to properly develop the management of the school.
- [15] The magistrate found for the plaintiff that, the defendant did utter the alleged words; that he uttered them concerning the plaintiff; that such words were untrue and that they were not only defamatory to the plaintiff's good name, but also insulting to the plaintiff's dignity.
- [16] On appeal before us and also at the trial, it was never contended that a remark to the effect that an individual has corrupt tendencies was not, in itself, defamatory and contumelious. The court a quo was not concerned with the broad enquiry as to meaning and effect of the alleged words. The issue in the case, as regards the merits, was really whether the alleged words were ever uttered by the appellant concerning the respondent. From now on I shall refer to the parties as such.
- [17] To that issue I now turn. The appellant put up a defence that, although he engaged the plaintiff in a discussion during the course of the meeting, he made no defamatory or contumelious remarks, which impaired the plaintiff's right to reputation, the esteem in which he was held by others in society. He also denied that he made any contumelious remarks, which impaired the dignity and self esteem of the plaintiff. He maintained that he merely asked the plaintiff the question, which was not injurious in the dual sense of the word.
- [18] During the course of the appellant's cross-examination the following exchange between him and Mr. Swanepoel took place:
- "Goed, kom ons hoor nou vandag vir die heel eerste keer, sê vir die agbare hof wat het u vir mnr Sesele gesê, want tot op hede is dit nog nie bekend nie? --- Ek het net vir mnr Sesele gevra: mnr Sesele noudat jy nou die inspekteur is van die skool en ons nou die werknemers by die skool is en ons het nou alreeds 'n grief ingesit, sê vir ons nou hoe verder (sic) dit.*
- Dit is al? --- Ja."
- [19] Nobody in his sound and sober senses would feel offended by such a question. Bearing in mind the circumstances which were prevailing at the school prior to the meeting, such a question, if ever it was asked by the appellant, would have been perfectly understandable and legitimate. It seems highly unlikely though that such an innocent question would have prompted any objective person in those circumstances to feel humiliated or insulted and unceremoniously to declare closed an otherwise orderly meeting and take legal steps afterwards. This is the strongest improbability in the entire case. It substantively weakens the appellant's case even before the force of the respondent's case is examined.

[20] The evidence of the respondent was that such a question was earlier asked by a certain Mr. Chere – vide signatory 12 exhibit “A”. It was never suggested to the respondent that his evidence on that particular point was untrue. In his testimony the appellant did not refute such evidence. It is improbable that the appellant, a teacher, would have repeated the same question that had already been politely asked and probably answered. This raises the important question: What caused the

respondent to abruptly end the meeting immediately after the appellant had spoken and asked the question, whereas he did not do so earlier immediately after another teacher had asked precisely the same question?

[21] The exercise of common sense suggested that the appellant probably said something different from what Mr. Chere had already said. As a result of what he said, the respondent left the meeting a broken hearted man. He felt insulted and offended. He felt humiliated and degraded in the eyes of those members of the public present at the meeting. The probabilities of matter are telling against the appellant’s alleged innocent question. It was put to him that his evidence to the effect that such innocent and polite words chaotically ruined the meeting, was false. He evaded dealing with the true reason or insinuation relating to the chaos which abruptly brought an end to the meeting. Instead he concentrated on the reason for the subsequent closure of the school. In my view, the sudden reaction of the respondent was naturally consistent with that of a humiliated person.

[22] Objectively considered, it is unthinkable to even suggest that such words could have had such a disruptive impact on the proceedings at the meeting. The most probable reason for the disruption is that the appellant must have uttered some belittling, nasty and abusive words so offensive to the respondent’s dignity and slanderous to his reputation that he felt he could not carry on with the meeting. I have painstakingly considered the appellant’s version, but I could find no sound and probable explanation for the unexpected closing of the meeting and the respondent’s spontaneous remark that he was not going to let the matter end there. We now know what he meant by that.

[23] The court a quo rejected the appellant’s version. It was not at all impressed with the strange and unorthodox manner in which his case was pleaded. About this aspect Mr. Benade, counsel for the respondent, had this to say:

“In die Verweerskrif word ontken dat die woorde gebesig is, maar in die alternatief word noodweer en noodtoestand geopper.

Dié wyse van pleit stel eintlik ‘n tipe erkenning daar. Want dit is reëlreg teenstrydig. Die Appellant kon dit nie glad nooit gesê het, maar alternatiewelik dit wel gesê het, maar onder noodweer/noodtoestand nie.

Die wyse van pleit ondergrawe in essensie die geloofwaardigheid van die gepoogde ontkenning.”

[24] About the appellant’s plea the magistrate commented as follows:

“Sy verweerskrif strook ook hoegenaamd nie met die verweerder se lyn van kruisverhoor aan die eiser nie.”

The critique was valid. The appellant’s plea was not a model of elegant draftsmanship. That was the first thing.

[25] In the second place the court a quo was not impressed by some of the suggestions put to the respondent by the appellant’s attorney during the course of cross-examination.

“Ter aanvang van die kruisverhoor is aan hom gestel dat die verweerder ontken dat hy die woorde geuiter het, maar net daarna was die hele verloop van die ondervraging en stellings dat die gewraakte woorde teenoor die Departement bedoel was en nie teenoor die eiser nie, dat die eiser alles te persoonlik opneem – hy was die verteenwoordiger van die Departement.

Verdermeer is egter ook aan die eiser gestel dat dit die gemeenskaplike gevoel van die onderwysers was dat die eiser vir ene Maloka in sy kwaad kom steek het.”

These comments are also fair and correct.

[26] In the third place the court a quo was not impressed by the testimony of the appellant himself.

“En dan kom getuig die verweerder lynreg hierteen dat hy nie sterk oor die saak gevoel het nie en dat hy hoegenaamd geen van die gewraakte woorde geuiter het nie – selfs nie eers teen die Departement nie.”

No critique can be levelled against the magistrate. The observations he made about the appellant were consistent with the evidence led.

[27] In evaluating the evidence, and this is the fourth aspect of the critique, the trial court made the following comment about the appellant:

“Dit is nie regtig duidelik wat die verweerder se saak is nie.”

That accurately summed it all up. The court a quo then implicitly found, on a balance of probabilities, that the version of the appellant was untrue. On the appellant’s version, the issue was, in my view, correctly decided against him. On appeal, I cannot disturb such a finding. Therefore, the appellant’s contention that he uttered the innocent words, he claimed to have uttered, cannot be upheld on appeal.

[28] The following exchange took place between the respondent and his attorney, Mr. Swanepoel, during the course of direct examination:

“Hoekom voel u hy het nie reggemaak nie, wat het mnr Dlamini gedoen wat u voel nie reg is nie? --- Tydens die voorlê van die vergadering en ek is so besig om die onderwyser te praat, dit is toe dat mnr Dlamini gesê het ek is daar sodat hulle met my korrupsie moet nou kom saamstem sodat ons broer kan nou aangestel word, ek en mnr Phillip.”

- [29] The respondent testified that such utterances were untrue. However, he reckoned that the other persons present at the meeting heard and accepted the words. I understood him to mean that they too regarded him as a corrupt official and that he got what he deserved from the unionist, the appellant. The argument that such remarks, if they were at all ever uttered, were directed at the department and not the respondent, was ridiculous, to put it mildly. It is simply absurd to suggest that a department, an unnatural person, could have a brother or that such a juristic person could be labelled as corrupt. Any contention along those lines was simply absurd and unpersuasive.
- [30] The aforesaid words were originally uttered in Sesotho. The gist of the statement was that the appointment of Mr. Philip Maloka, as the principal, was not done on merits, but that the selection process was unfairly manipulated by corrupt practices and that the respondent was there to sell his corruption to the teachers so that they (the respondent and his corrupt colleagues) could have their brother, Mr. Maloka, permanently accepted as the principal. It must be kept in mind that Mr. Maloka had already been appointed and that there was a grievance still pending against his appointment. The unwanted gentleman, Mr. Maloka, and the respondent had a common friend, a certain Mr. Khambule. He was also a school developer and the respondent's predecessor at the school in question.
- [31] The trial court implicitly accepted the version of the respondent, that those were the true words which the appellant had uttered at the meeting; that those words were defamatory and contumelious; that the defendant uttered such words concerning the plaintiff and that the words impaired the plaintiff's reputation as well as his dignity.
- [32] Mr. Pienaar submitted that the court a quo erred in making such findings. The thrust of his contention was that, as he argued, because the court a quo made no credibility findings, the issue as to precisely what the defendant said, should have been resolved by having regard to the probabilities and improbabilities inherent in the two irreconcilable versions. On the strength of that argument, counsel then submitted:

"7.4 Dit word met eerbied aan die hand gedoen dat, uit die omringende waarskynlikhede dit duidelik daarop dui dat die appellant nie die woorde geuiter het nie, en wel op grond van die volgende:

7.4.1 beide die appellant en die respondent getuig dat die respondent nie betrokke was in die aanstel of voer van onderhoude met betrekking tot die aanstel van die hoof, wat tot die grief aanleiding gegee het nie.

7.4.2 die respondent se besoek aan die skool was uitsluitlik na aanleiding van die onderwysers se grief ten aansien van die aanstelling van die skoolhoof.

7.4.3 daar was dus geen rede waarom die appellant enige korrupsie sou toedig aan die respondent se optrede, in besonder met betrekking tot die aanstelling van die hoof, alwaar die respondent nie daarby betrokke was nie."

[33] I do not, with respect, agree with the submission. It is indeed so that in evaluating the evidence the court is required to make findings as regards the credibility and the reliability of witnesses and to take into account the probabilities and improbabilities inherent in the case as well. Where the scale is evenly poised, then the probabilities must prevail.

STELLENBOSCH FARMERS' WINERY GROUP LTD AND ANOTHER v MARTELL ET CIE AND OTHERS 2003 (1) SA 11 (SCA) on p. 14 and 15 par. [5]

[34] Although the court a quo did not expressly made findings as to whose testimony it accepted as credible and reliable and whose testimony it rejected as incredible

and unreliable evidence, its incisive critique of the appellant, on the one hand, quite clearly showed that it was not impressed by the him as a witness. On the other hand, it levelled no critique at the respondent. It follows therefore, as a matter of logic, that the court a quo was implicitly satisfied that the evidence given by the respondent was credible and reliable. However, the same could not be said about the appellant.

[35] Between the appellant's version and the prevailing circumstances, there was no connective force. Between the respondent's version and the prevailing circumstances, however, there was a connective tissue. It was that natural force which, in a compelling sort of way, moved me to prefer the version of the respondent to that of the appellant.

In my view, this is not the case where the scale was evenly balanced as far as the weight on aspects of credibility and reliability was concerned. On the contrary, the scale was clearly tipped in favour of the respondent on those aspects.

[36] I deem it necessary to explore the probabilities and improbabilities a little deeper. Counsel was at pains to contend that the version of the appellant was more probable than that of the respondent. The basis of the contention was that it was highly improbable that the appellant could have called the respondent a corrupt official, because the respondent was not involved in the appointment of the principal. The contention failed to persuade me. The appellant did not plead that since he was aware that the respondent did not have anything to do with the appointment of the unwanted principal; he had no reason to humiliate him, as alleged. It must be borne in mind that at the trial it was suggested to the respondent that, although he was not involved, he indirectly influenced the decision to have the principal appointed as a show of loyalty to his friend, Mr. Khambule.

[37] On three or so occasions it was sarcastically insinuated that the "department" did not care about the grievance of the teachers. One can safely read the "respondent" for the word department.

"..... ek stel net belang in Maloka, my vriend wie ek aangestel het."

So said the appellant's attorney to the respondent.

Now, the pronoun “ek” in this quotation was, according to the appellant’s trial attorney, supposed to mean the department and not the plaintiff. I have already mentioned that such a suggestion was fallacious.

[38] The following suggestion was like a rising tide in the ocean against the respondent.

“..... maar jy luister nie na my griewe nie, wat sê u?”

So continued the appellant’s attorney accusatively. The pronouns “jy” and “u” were connected. They referred to the respondent personally.

The next suggestion was highly incriminating. It rocket and shattered the very foundation of the appellant’s version or reliance on probabilities.

“MNR KRUGER: Soos die hof behaag. My instruksies is meneer dat jy indirek ‘n rol gespeel het by die finale aanstelling van Maloka deur middel van Khambule.”

The emphasis is mine.

[39] The foregoing suggestions were forcefully put to the respondent on behalf of the appellant. It is trite that in the process of assessing and analysing evidence in search of the probable truth, a court is entitled to take into account the admissions or denials contained in the suggestions put to witnesses during the course of the presentation of the opposing versions.

S v W 1963

(3) SA 516 (AD) at 523 D – E;

S v GOUWS 1968 (4) SA 354 (GWPA) at 357 H;

S v MJOLI 1981 (3) SA 1233 (A) at 1248 A;

ZUNGU v MINISTER OF SAFETY & SECURITY 2003 (4) SA 87 (D) at 93 A

The appellant cannot now be heard to say the respondent was not involved in the appointment of the principal.

[40] All these suggestions and more, strongly tend to fortify the contention of Mr. Benade that, the appellant had the motive to belittle the respondent, because he believed the respondent had had a hand in the official corruption, which underpinned the appointment of his friend, the unwanted principal, albeit it indirectly through Mr. Khambule. The appellant desperately and evasively tried to distance himself from the suggestions of his attorney when it dawned upon him what adverse impact his admission of such suggestions was going to have. Where else could the appellant’s attorney have got all that if not from the appellant himself?

[41] The appellant adopted a very ambivalence stance during the trial. He stated that he was not really concerned about the appointment of Mr. Maloka as the principal of the school. On the contrary it was suggested to the respondent that the school teachers were “gatvol” because

their grievance was not receiving urgent and meaningful attention. It must be borne in mind that the appellant was a trade unionist whose responsibility it was to take up the grievances of the members of his trade union with the department. It must also be remembered that it was the responsibility of the respondent to bring such grievance to the attention of the department. Whenever a disagreement arose between the school teaching personnel and the department, the union representative and the department representative could be expected to be on a collision course.

[42] It was suggested that the teachers under the stewardship or leadership of the appellant, were frustrated and angry at the meeting. The respondent was also told that if the appellant had said the words, the respondent alleged he said, he would not have been a voice in the wilderness, but that he would have expressed the general sentiments of his frustrated, angry and “gatvol” followers. An injurious and untrue statement does not become true and uninjurious because many other persons share the same sentiments as the one who expressed or publicized such an unfounded and invasive statement.

[43] It was also put to the respondent that after the appellant had spoken, his angry followers reacted as a unit.

“..... hulle het soos een man opgestaan en uitgestap by die vergadering nadat hy daardie woord gesê het....”

From this it can be legitimately inferred that the angry teachers, in a show of solidarity with their likewise angry spokesperson, left the meeting. His anger was their anger.

[44] Those suggestions were consistent and reconcilable with the angry mood on the part of the teachers which was prevailing at the meeting. The apparent anger of the teachers and the angry note on which the meeting abruptly ended considered against the backdrop of the defiant letter from the same teachers to the respondent the day before, all strongly militate against the appellant’s claim or denial that he was not frustrated or angry or that he did not have strong views about the appointment of the principal.

[45] Certainly his denial was in sharp contrast to the suggestions which his attorney had earlier put to the plaintiff.

Notwithstanding his denial, the evidence as a whole shows that the appellant was in the forefront of the turmoil at the school particularly the events at the meeting.

[46] He was the shop steward, the floor representative of the trade union, SADTU, and the recognised spokesperson of the agitated and frustrated teachers who confronted the school developer, the respondent, at the meeting. There were about 20 persons at the meeting, the majority of whom were the angry teachers, the adherents of the appellant. On the previous day they had notified the respondent in no uncertain terms about their rebellion against the principal. The urgent meeting which the respondent convened was precisely prompted by that protest letter – exhibit “A”. The appellant had the last say at the meeting. His final remarks brought the proceedings to a sudden end. There are overwhelming probabilities,

which forcefully indicate that the appellant did make the remarks complained of concerning the respondent.

[47] In my view, the appellant had a clear motive to humiliate, degrade and insult the respondent. He regarded the respondent as a friend of the principal. He believed the respondent and his equally corrupt colleague(s) had bent the rule and cut corners to have his or their undeserving friend appointed at the expense of some more deserving and meritorious teachers. His contention that it was improbable for him to have uttered such defamatory and contumelious words, because he knew the respondent was not involved in the appointment of the principal, failed to impress me in the same way as it failed to impress the trial magistrate.

[48] Mr. Benade correctly made the submission that:

“3.7 In die lig van voormelde deurmekaarspul en konkoksie ten opsigte van die Appellant se weergawe, kan die Landdros nie gekritiseer word omdat hy die Appellant se weergawe (ontkenning) verwerp het, en bevind het dat Appellant wel die woorde geuiter het.”

There is substance in the submission.

[49] In the circumstances, I have come to the conclusion, and it is a conclusion grounded on my firm conviction, that the respondent has, on a balance of probabilities, discharged the onus of establishing:

that the unwanted principal was not his friend;

that he did not play a role in his appointment as the principal;

that he was not guilty of any proven act of corruption;

that the appellant uttered the words complained of;

that the appellant uttered the words concerning the respondent;

that the words so uttered, were defamatory and contumelious;

that the appellant uttered such words cum animo iniuriandi; and

that the respondent's name and dignity were thereby impaired.

[50] For the reasons advanced herein, I am not persuaded that the court a quo committed any appealable misdirection, which warrants any appellate interference with the judgment below. In the absence of any material misdirection, I would, therefore, uphold the verdict on the merits.

[51] I turn now to the quantum dimension of the appeal. Mr. Pienaar submitted that the court a quo erred in awarding damages in the amount of R20 000,00 in respect of the fama component of the claim in addition to an award of R20 000,00 in respect of the dignitas component thereof. However, Mr. Benade submitted that the court below did not err in allocating two separate awards of R20 000,00 each in respect of the fama, on the one hand, and the dignitas, on the other hand.

[52] Among others, the trial court found that:

“Die eiser belaster is en sy dignitas aangetas is.”

I do not agree with Mr. Pienaar’s submission. The Afrikaans word “belaster”, as used by the trial magistrate, is defined as follows in English:

“belaster – slander, defame, calumniate, libel, traduce, malign

belastering – slandering, defamation”

See Tweetalige Woordeboek, Bosman Van der Merwe Hiermstra, 1984 Edition, p. 49.

[53] The New Shorter Oxford English Dictionary, Vol 1, Lesley Brown 1983 Edition on p. 615 defines the verb “to defame” as:

“defame/diffamare spread about as an evil report [fama fame n.]

Bring dishonour on; shame, disgrace.

Attack the good reputation of; speak ill of; slander, libel.

Cause to be suspected of an offence.”

[54] In my view, the finding of the trial court boiled down to the same thing as saying that the plaintiff’s fama, in other words, reputation, was impaired and that his dignitas, in other words, dignity, was also impaired.

[55] As regards the fama component of the claim, it must be borne in mind that the appellant accused the respondent of corruption. In common law and in statutory law corruption is a crime and has always been a crime. The underlying element of such an offence is that it is a misconduct or a misdeed which negatively affects the public interest, be that of the State or the community. It is frowned upon as a disgraceful conduct which destroys the very core of the public morality. See Gardner and Lansdowne, South African Criminal Law and Procedure, Vol 1, 1946 5th Edition, p. 2 & 8.

[56] No doubt labelling a person as corrupt in the presence of and within the hearing of the thirds, is defamatory. The effect of the word is that it degrades the social esteem of the victim in which he is held in the community. It undermines a person’s reputation, in other words, good name. There were approximately 20 persons, most of whom were teachers, the respondent’s subordinates, when the appellant used such a defamatory word concerning the respondent. Most of them apparently believed that the accusation was true. On a balance of

probability, it was not shown to be true.

- [57] I have earlier profiled the respondent and I deem it unnecessary to repeat myself. What is important though is that he was a fairly senior government official with authority not only over the teachers before whom he was humiliated and ridiculed, but over the appellant as well. The appellant was an instigator of the turmoil and turbulence which rendered the school dysfunctional and ungovernable. Corruption is becoming cancerous and malignant evil of greed in our society. It has to be eradicated to stop the decay of the societal moral fibre. Notwithstanding that, fighting corruption must be done in a civilised and responsible way. In that regard, respect for authority is critical. The appellant dismally failed to demonstrate that in dealing with the grievance they thought they had. The disruptive impact of his action was disturbingly deplorable.
- [58] Mr. Pienaar's final submission was that the awards were disproportionate to the civil wrong committed. However, Mr. Benade disagreed. His final submission was that the awards were not exorbitant, but conservatively nominal.
- [59] The basic principle, as regards the quantum dimension of the case, is that a superior court with appellate jurisdiction has limited power to interfere, on appeal, with an award made by a trial court. *MOGALE AND OTHERS v SEIMA* 2008 (5) SA 637 (SCA) at 640 G
- [60] I have already mentioned the factors which, though not specifically enumerated by the trial court, have to be taken into account in quantifying the respondent's damages. At the risk of repeating myself, I want to stress the effect of the accusation. The respondent was portrayed as a morally depraved person open to dishonest practices. The accusation went much further than that. The respondent was not only branded as corrupt official, but he was accused of something worse than that. He was confronted with a grave accusation that he had come to the school to manipulate the teachers to accept his corrupt decision, so he and his corrupt friend, the principal, could continue with their further corrupt appointments of their brothers. The word brother in this context is scornfully used to mean their cronies. The insinuation was that the respondent was not developing and promoting the interests of the school, as he should, but those of his friends. Such a person was obviously not a fit and proper person to hold a public office of a school management developer.
- [61] Levelled as they were, by a junior against his senior within the hearing of many other subordinates, the accusations were very grave indeed. The respondent was bitterly humiliated by such defamatory and contumelious accusations. He was so hurt, he instantly left the meeting before any constructive conclusion could be reached. From that moment things just got worse at the school. The rest, as they say, is history.
- [62] In the circumstances, such as these, where the authority of the respondent was so flagrantly undermined and his character so viciously assassinated, I am of the firm view that the first award of R20 000,00 in respect of the defamatory invasion (impairment of one's reputation) and the second award of R20 000,00 in respect of the contumelious invasion (impairment of one's dignity) amounted to an equitable compensation and not at all exorbitant or

disproportionate to the wrong committed and the profile of the respondent. I can find no sound reason to justify any interference with the quantum on appeal. If we were to do otherwise, our decision would not be compatible with the proper exercise of judicial discretion. Therefore I am inclined to dismiss the second leg of the appeal as well.

[63] Accordingly, I make the following order:

63.1 The appeal fails in toto.

63.2 The judgment is upheld in respect of the merits and the quantum.

63.3 The appellant is directed to pay the costs of the respondent relating to the appeal.

M.H. RAMPAL, J

I concur.

C. VAN ZYL, J

On behalf of appellant: Adv. C.D. Pienaar Instructed by:

Quinton Grimbeek Attorneys

BLOEMFONTEIN

On behalf of respondent: Adv. H.J. Benade

Instructed by:

Naudes

/sp

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