

SOUTH AFRICA / JUDGMENT

Hechter v Benade (20595/2016) [2016] ZAGPPHC 1018 (5 December 2016)

[2016] ZAGPPHC 1018

COURT

North Gauteng High Court, Pretoria

BEFORE

N V Khumalo

CASE / FILE NUMBER

20595/2016

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REPUBLIC

OF SOUTH AFRICA

IN

THE HIGH COURT OF SOUTH AFRICA

GAUTENG

DIVISION, PRETORIA

CASE

NO: 20595/2016

5/12/2016

Not

reportable

Not

of interest to other judges

Revised.

In the

matter between:

PAUL

HECHTER

PLAINTIFF

And

M

BENADE

DEFENDANT

JUDGMENT

KHUMALO J

INTRODUCTION

- [1] This is an undefended action for damages. The Plaintiff is claiming an amount of R1.3 Million from the Defendant. His cause of action is that the Defendant has defamed him. The amount is for damages for the impairment of his dignity and reputation, for which he has claimed R650 00.00 for each class of damages.

BRIEF

BACKGROUND

FACTS

- [2] The Plaintiff and Defendant are both residents and neighbours in the Midstream estate in Centurion. A spat ensued between the two of them after the Plaintiff lodged several complaints with the Body Corporate against his neighbours, the Defendant and her husband, for keeping chickens in their property that were making a noise and for later substituting the chickens with nearly 50 to 60 rabbits whose smell the plaintiff also complained about. The Plaintiff alleges to have on several occasions taken photos of the chickens and the rabbits to highlight the conditions under which they were being kept.

- [3] A short version of his cause of action as outlined in the particulars of claim is that: After the spat, in retaliation the Defendant

published a statement on facebook starting a smear campaign against him, accusing him of being a peeping tom. The Defendant took a photo of him and posted it on facebook calling him a perverse neighbour, an idiot and an ugly piece of shit." The facebook message was accessed by friends of the Defendant and third parties to whom he refers as a hundred other people. His name and residence were mentioned. He alleges that the publication of the statement on facebook was wrongful and defamatory and was made with the intention to defame, injure his reputation and his dignity. It is per se defamatory of him and was understood to that extent by the persons to whom it had been published, and had been meant so to be by the Defendant. As a result of the defamation and insult to his dignity, his dignity has been impaired, his reputation has been damaged and he has suffered damages as claimed. He therefore claims payment of the amount of R1.3 million rand as compensation.

- [4] The Plaintiff has made an affidavit to indicate how his good name was affected in the estate where he resides and to his business and friends. Indicating that the residents in the estate were warned to be careful when they send their children to the resident pool as the Plaintiff will be watching them, implying that he was a paedophile. The post elicited messages from

other facebook users like "shoot the bastard in the face with a pelletgun, the ugly two faced jurk". Others said as a pervert he should be reported to the police. He was called a "flippen gemors" (scum), "a sick bleksem", "a monster", "a disgusting piece of shit".

- [5] Plaintiff complains that this affected his business and his reputation as a businessman and as a well-known resident of the

estate. Affected was also his good name and standing in the community. The business he runs with his brother and fiancée in the

estate lost clients. The situation became so worse that he also began to receive death threats from a facebook friend of the Defendant

threatening that him and his biker friends will sort the Plaintiff out for being a child molester and a paedophile. He was therefore

fearing for his own safety and that of his fiancée. He had to move to another residence in the estate and also obtain an order from the court interdicting the Defendant, ordering her to retract her statement and remove his picture from the facebook. The Defendant

only did that on her private facebook account. The Defendant also changed residence and moved right next to him. She remains a

neighbour.

- [6] In filing his affidavit for damages he now also referred to other damages he has not claimed in his particulars of claim. He mentions expenses for relocation he paid in the amount of R18 500 instead of R16 000, the deposit he paid on his previous residence, and the R20 000 he paid on the new residence. An amount of R40 000 and R70 000 for his billable hours and the legal expenses for the time he spent with his lawyers. He says he borrowed the money for his relocation from his brother.
- [7] Furthermore he was shocked and traumatised by the mala fide and unlawful conduct of the Defendant and finding it difficult to regain confidence in other people, to sleep and feeling depressed all the time. His constitutional right to privacy and dignity were infringed. He says he feels violated and severely infringed.
- [8] It is in this affidavit where he explains at length what he had gone through as a result of the facebook defamation. He had to endure the suspicious looks from other residences, losing clientele in his business within the estate, losing money and also subjected to threats of harm to his person by the Defendants' allies. How he was perceived by other residents and the community at large. Which was reflected from the responses on facebook. He therefore dealt extensively with factual allegations to show how injury to his person and his reputation was orchestrated by the Defendant.

- [9] Plaintiff then dealt in the affidavit with the financial loss elaborating on how he lost the money and the amounts as a result of Defendant's actions. However in his particulars of claim there is no claim for financial loss as he now claims in his affidavit.

Regrettably financial loss is not part of his cause of action.

- [10] On the other hand he has conformed to the requirements of defamation by establishing the two basic elements he is required to prove, namely: that viewed fairly by a reasonable man, the published statement:

- (a) refers to him; and
- (b) is defamatory of him and caused injury to his personality as well).

Defamation being generally defined as 'the unlawful, intentional, publication of defamatory matter (by words or conduct) referring to the Plaintiff, which causes his reputation to be impaired' in Burchell and Hunt' The Law of Defamation in South Africa at 35.

- [11] A defamatory statement is said to be one which lowers the person to whom it refers in the estimation of ordinary, right thinking persons, generally. Whether if construed in their secondary or primary meaning, the words or statement complained of are reasonably capable of conveying to a reasonable reader a meaning defamatory of the Plaintiff (eg, insulting, offensive, derogatory, libellous or contemptuous).
- [12] The Plaintiff was without a doubt injured to his dignity and his reputation, which is gathered from the kind of response the facebook statement instigated, which was insults and threats. It also placed the Plaintiff's life in danger and doubt to his self-worth.
- [13] The approach to be followed in the determination of what is fair and adequate compensation for the injured party for the sequelae for his or her injuries has been explained by Bosielo AJA in Minister of Safety and Security v Tyulu 2009 (5) SA 85 (SCA) at paragraph 26, as follows:

"the primary purpose is not to enrich the aggrieved party but to offer him or her some much needed solatium for his or her injured feelings"

Whilst Nugent JA in Minister of Safety and Security v Seymour 2006

- (6) SA 320 (SCA) at paragraph [17] had stated that:

"the assessment of awards of general damages with reference to awards made in previous cases is fraught with difficulty. The facts of the case need to be looked at as a whole and few cases are directly comparable. They are a useful guide to what other courts have considered to be appropriate but they have no higher value than that"

- [14] At the end of the day due regard of what is fair and adequate is in the discretion of the court; see J Neethling, JM Potgieter & PJ Visser Neethling's Law of Personality 2ed. I have compared the awards made in the authorities where similar facts are applicable against the

factors normally to be taken into consideration in determining the amount, that is, sex, designation and social standing of the Plaintiff. Also, the falsity of the statement, improperness of the motive, the effect it had to Plaintiff personally and publicly as seriously impacting on the ultimate award to be made.

[15] I have noted that the Plaintiff has split the acts of defamation asking for a specific amount for each, for impairment of dignity and reputation. The court recognises the closeness of the injury to Plaintiff's personality and reputation as defamation violates a person's dignity, (more correctly put, that persons fama or reputation; see Amler Precedents of Pleadings, 8th Edition by Harms) They are in essence incidences of each other and the external effect of each on the Plaintiff virtually indistinguishable. I have also taken that factor into consideration in determining what is fair and a reasonable.

[16] Under the circumstances, I make the following order

[16.1] The Plaintiff's claim is upheld. The Defendant is ordered to pay the Plaintiff an amount of R350 000.00 damages for defamation of his dignity and reputation.

[16.2] Interest at the rate of 9% per annum payable 14 days from date of judgment to date of payment

[16.3] Costs of suit.

N V KHUMALO J

JUDGE OF THE HIGH COURT

GAUTENG DIVISION

PRETORIA

On behalf of the Plaintiff:

W J BURGER

Instructed by:

D P DU PLESSIS INC

Ref: P Du Plessis

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