

SOUTH AFRICA / JUDGMENT

Isaacs v Kearns and Another (10280/10)

[2010] ZAWCHC 578 (26 November 2010)

[2010] ZAWCHC 578**COURT**

Western Cape High Court, Cape Town

BEFORE

Louw

CASE / FILE NUMBER

10280/10

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In the Western Cape High Court of South Africa

(Cape of Good Hope Provincial Division)

In the matter between:

Case No: 10280/10

Venecia Lynette IsaacsPlaintiff

Versus

Collin KearnsFirst Respondent

Jolene KearnsSecond Respondent

Judgment

delivered: 26th November 2010

LOUW J

- [1] The plaintiff is 32 years old. She is the personal assistant of Mr. G. Derris an attorney who practises in Athlone and who is also her attorney of record in this matter. She sues the defendants, a father and his 27 year old daughter, for delictual damages arising from an incident which occurred on 12 December 2009.
- [2] The defendants have entered appearance to defend but, having been barred from pleading, they are in default of filing a plea.
- [3] The plaintiff testified and described the incident. She was at her employer's home in Cressy Road, Athlone. He is blind and she assists him during the course of the day with his activities. The defendants are the next door neighbours of Mr. Derris and their dogs had

come loose and had upset Mr. Derris's Rottweiler dogs. The plaintiff called upon the second defendant to fetch their dogs. The second defendant came out her house and started to verbally abuse the plaintiff. She called her a 'naai' and a 'poes'. The first defendant, who heard the commotion, came out of his house. He proceeded to expose his penis to the plaintiff, telling her to 'look at it' and he asked her 'do you want it'.

- [4] The incident took place in the street and in the presence of neighbours and members of the public.
- [5] The plaintiff testified that the first defendant's conduct left her shocked, embarrassed, sad and emotionally denigrated. She experienced his conduct as disrespectful to her as a woman and a person. She felt disgusted, embarrassed and humiliated because of the words addressed at her by the second defendant. There has also been a reaction from the community. The plaintiff is well known in the broader community in Athlone and feels that her good name and reputation as an honest and respectable person has been damaged. People with whom she had previously associated now shun her and appear to avoid her.
- [6] The plaintiff's claim falls under the action iniuriarum for damages in the form of a solatium for the infringement of her dignity, her senses and good name.
- [7] The plaintiff has been indecently assaulted by the first defendant. Although her physical integrity was not been infringed by a physical blow to her body, she has suffered an infringement of her senses and has experienced and continues to experience feelings of discomfort, disgust and repugnance. She continues to experience emotional shock and she cried in the witness box when recounting the events. These are not trivial consequences for the plaintiff. The first defendant's conduct was unlawful. A reasonable person in her position would have experienced the same reaction. The first defendant acted with the intention to injure the plaintiff's mind and spirit and her feelings of dignity and of selfworth. She also experiences a lowering of esteem in the eyes of others.
- [8] The consequences of the second defendant's conduct has, likewise not been trivial. The plaintiff's subjective feelings of self respect and dignity have been infringed. The second defendant's conduct was insulting, belittled the plaintiff and was contemptuous of her. It was unlawful. Not only was the plaintiff's subjective feelings of dignity infringed, but a reasonable person in her position would also have felt insulted, denigrated and demeaned. The second defendant intended to insult the plaintiff in public and to injure the plaintiff in her feelings of dignity and self respect.
- [9] The plaintiff is entitled to damages against both the defendants.
- [10] Ms Anthony, who appeared on behalf of the plaintiff submitted, with reference *Tuch v Mverson* 2010
- (2) SA 462 (SCA), where it was stated in a court application that a person (who was already deceased by the time the action was heard) had stolen between R5 and 6m from his brother, that substantial amounts in excess of the R30 000.00 awarded for defamation in that case,

should be awarded to the plaintiff. A court awarding damages in a case like this has a wide discretion to fix an amount which is fair and reasonable in the circumstances of the case and the prevailing attitudes of the community. Awards made in other cases can be no more than a guideline. In *Ryan van Petrus* 2010

(1) SA 169 (SCA) similar words were used and the court awarded damages in the amount of R15 000.00. In my view, an award of R15 000.00 against each of the defendants will be an appropriate amount.

[11] The awards do not exceed the jurisdiction of the magistrate's court. However, in view of the nature of the claim and the infringement of the plaintiffs personality rights, the plaintiff was in my view justified in bringing the action in this court and she should be awarded costs on the High Court scale.

[12] It is ordered that:

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1. The first defendant pay the plaintiff the amount of R15 000.00;
2. The second defendant pay the plaintiff the amount of R15 000.00;
3. The defendants pay the costs of the action, jointly and severally, the one paying the other to be absolved.

W.J. LOUW, J

Judge of the High Court

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