

SOUTH AFRICA / JUDGMENT

Moadira v Makheta (24604/2010) [2015] ZAGPPHC 924 (3 December 2015)

[2015] ZAGPPHC 924

COURT

North Gauteng High Court, Pretoria

BEFORE

Tuchten

CASE / FILE NUMBER

24604/2010

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IN

THE HIGH COURT OF SOUTH AFRICA

GAUTENG

DIVISION, PRETORIA

CASE

NO: 24604/2010

3/12/2015

NOT

REPORTABLE

NOT

OF INTEREST TO OTHER JUDGES

In

the matter between:

MATSHEDISO

MOSES

MOADIRA Plaintiff

and

MOTLATSI

MAKHETA Defendant

JUDGMENT

Tuchten J:

1. This is an action for damages for defamation. The parties were officials in the municipality of Matlosana (the Municipality), which has its municipal offices in Klerksdorp. At the relevant time the plaintiff was the municipal manager and the defendant was the manager of support services, with responsibility amongst other things for supply chain management. The defendant reported directly to the plaintiff.
2. In about 2009, relationships between the parties soured. It seems that allegations of corruption and mismanagement within the

Municipality were rife. In a document dated 15 January 2010 (the grievance letter), the defendant lodged a formal complaint against

the plaintiff in terms of s 18 of the Local Government: Municipal Performance Regulations for Municipal Managers and Managers Directly

Accountable to Municipal Managers, 2006 ("the Regulations") made pursuant to s 120 of the Local Government: Municipal Systems Act, 32 of 2000 . Reg 18 of the Regulations reads:

An employee may lodge a complaint or grievance concerning an act or omission of the employer with the municipal council in accordance

with applicable procedures and time frames.

3. The plaintiff's case is that the grievance letter contains material that is defamatory of him. In the grievance letter, the defendant

accused the plaintiff of corruption. This is so obviously defamatory that I need not identify the individual passages complained of. An accusation of corruption manifestly lowers the victim in the estimation of right thinking persons.

4. The plaintiff alleged in his particulars of claim that the defamation was published to, amongst others, officials of the Municipality, the Speaker of Council, the MEC Corporate Governance and Traditional Affairs as well as the office of the national Minister of Corporate Governance and Traditional Affairs.
5. The grievance letter itself is addressed to the executive mayor and the Speaker and reflects at its end that copies of the document were sent to the MEC and the Minister. But the defendant testified that he merely handed the grievance letter in to the Relations Office for them to take it to the Speaker and that he did not send the grievance letter to either the MEC or the Minister. The defendant said that the procedure within the Municipality for the submission of grievances was to hand the complaint in to the Relations Office and it was the responsibility of that Office further appropriately to circulate it. The plaintiff himself testified that he believed that the grievance letter had been published to the persons alleged

by him and I accept that the plaintiff sincerely believed that publication had so taken place. But there is no reason to reject the evidence of the defendant and there was no direct evidence, which ought to have been readily available if it existed, to contradict the defendant on this issue. The plaintiff was burdened with the onus to prove publication.

6. I therefore find that the plaintiff has proved no more than publication of the grievance letter to the Relations Office of the

Municipality.

7. This is important because one of the defences pleaded was qualified privilege, ie that the defamatory matter was published in the exercise of a right on the part of the defendant to a person who had a corresponding duty to receive it. It was not suggested that the submission of the grievance letter to the Relations Office was not in accordance with the Municipality's applicable procedures and time frames. The defendant manifestly proved the defence of qualified privilege. It is therefore not necessary for me to deal with the defences of fair comment and truth and public interest which were also pleaded although I shall deal in passing with the issue of truth at a later stage.
8. No replication was delivered by the plaintiff. This is important in the present case because a defence of qualified privilege may be defeated by alleging and proving that the defamatory matter was not germane to the matter in hand (ie that it had no foundation in the evidence or circumstances surrounding the case) or that it was actuated by an indirect or improper motive such as malice.
9. There was nothing to this effect on the pleadings and when counsel for the plaintiff attempted to cross-examine the defendant on these matters, I disallowed cross-examination because they were not issues raised on the pleadings. Both plaintiff and defendant and a witness called by the defendant gave evidence and were cross-examined. The plaintiff was recalled with the leave of the court on certain issues and cross-examined. At the commencement of his argument, counsel for the plaintiff submitted a written application to amend the plaintiff's pleadings by the introduction of a replication alleging malice. I refused the amendment. I did so because of the manifest prejudice which it would have occasioned the defendant and the absence of any acceptable explanation for its late submission.
10. It follows that the defence of qualified privilege must succeed.
11. I said I would touch on the defence that the allegations of corruption which the defendant made against the plaintiff were true.

Both parties accused each other, with every indication that they were sincere in doing so, of corruption. The onus to prove that the allegations of corruption were true rested on the defendant.

12. The defendant's case was largely based on inferences which the defendant claimed flowed from the failure of the plaintiff to follow proper procedures. It was not, for example, even suggested that the plaintiff had inappropriately enriched himself by taking bribes. The plaintiff denied that he had failed to follow proper procedures. As the basis for the procedures followed in the offices of the Municipality, ie its regulations, codes of conduct and practices, were neither pleaded nor proved, it is impossible to come to any conclusion favourable to the defendant on this issue.
13. It follows that the defence that the allegations of corruption were true and in the public interest must fail because the defendant has not proved that they were true.
14. My conclusion on the fate of the defence of truth and public interest has a bearing on the question of costs. At least two days of this three day trial were spend on this defence. In addition, the case was prolonged because counsel for the defendant was inadequately prepared. Neither of the parties is wealthy. Indeed, I formed the impression that both of them had fallen on hard financial times. I therefore propose to make no order as to costs. The decision I made at the commencement of the trial, which carried a costs order against the defendant, however stands.
15. I make the following order:
 1. There will be judgment for the defendant against the plaintiff.
 2. There will be no order as to costs.

NB Tuchten

Judge of the High Court

2 December 2015

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