

SOUTH AFRICA / JUDGMENT

Roberts v Johncom Media Investments Limited (8677/04)

[2007] ZAWCHC 1 (8 January 2007)

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COURT

Western Cape High Court, Cape Town

BEFORE

Weinkove

CASE / FILE NUMBER

8677/04

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IN THE HIGH COURT OF SOUTH AFRICA

(CAPE OF GOOD HOPE PROVINCIAL DIVISION)

CASE NO. 8677/04

In the matter between:

RONALD SURESH ROBERTS

Plaintiff

and

JOHNCOM MEDIA INVESTMENTS LIMITED Defendant

J U D G M E N T

WEINKOVE, A.J.

1. On 3 October 2004, the defendant published an article about the plaintiff under the title “The Unlikeable Mr. Roberts” which was written by Mr. Barron, a freelance journalist. The article appeared in the “Insight and Opinion” section of the Sunday Times newspaper, owned and published by the defendant.
2. The plaintiff’s ultimate complaint is that the article published by the defendant was defamatory of him in two respects. Previously he had complained about many other respects: in fact, eleven in total, but by the stage of argument had reduced to two respects.

3. The first respect relates to this passage:

“His firm arranged for Johannesburg law firm Deneys Reitz to give him a job. After three months he left, saying he wouldn’t be the firm’s “smiling native”. In effect, he was told to leave when it was found he’d been making private business arrangements that created a conflict of interest for Deneys Reitz.

He was lucky. Had he been a South African lawyer, steps would probably have been taken to have him struck from the roll.

Roberts says he left because he was “bored”. Either way, his colleagues, who had found him insufferable, cheered his departure.”

4. The second complaint relates to the following passage in the article:

“Roberts’ obsessiveness goes beyond politics, however. His pursuit of anyone who says anything against him is so notoriously obsessive that few people are prepared to be quoted on him.

He pursued the SABC relentlessly for months after it unwittingly included someone charged with child abuse on a programme.”

5. The action for defamation protects every person’s right to a good name and unimpaired reputation. That right is also protected by our Constitution.

6. Defamation has been defined as the unlawful publication animus injuriandi of a defamatory statement of and concerning the plaintiff. A statement is defamatory if it tends to lower the plaintiff in the estimation of other right-thinking members of society.

7. In the matter of Khumalo and Others v Holomisa, [2002] ZACC 12; 2002 (5) SA 401 (CC) at 418 ff, the constitutional court reaffirmed the recognition and protection of human dignity as a fundamental constitutional value. In paragraph [27] the court said,

“The value of human dignity in our Constitution is not only concerned with an individual’s sense of self-worth, but constitutes an affirmation of the worth of human beings in our society. It includes the intrinsic worth of human beings shared by all people as well as the individual reputation of each person built upon his or her own individual achievements. The value of human dignity in our Constitution therefore values both the personal sense of self-worth as well as the public’s estimation of the worth or value of an individual. It should also be noted that there is a close link between human dignity and privacy in our constitutional order. The right to privacy, entrenched in s 14 of the Constitution, recognises that human beings have a right to a sphere of intimacy and autonomy that should be protected from invasion. This right serves to foster human dignity.”

8. As far as the media is concerned, the supreme court of appeal in the case of National Media Ltd v Bogoshi, 1998 (4) SA 1196 (SCA) substituted the requirement of animus injuriandi with strict liability unless there is an absence of negligence on the part of the media. The basis of this decision is the view that because the media occupies such a powerful position, they should not be treated on the same footing as ordinary members of the public. They are thus strictly liable unless they are not negligent in all the circumstances of the case.

9. Whether or not a statement is defamatory depends on the ordinary meaning of the words used. The test to be applied is an

objective one and relates to what meaning would be attributed by an ordinary reasonable reader with ordinary intelligence in the context of the statement that has been made. In certain circumstances a secondary meaning, or an innuendo, can convert an otherwise innocuous statement into a defamatory one.

10. There are commonly accepted defences to rebut what otherwise might appear to be an unlawful statement. They include, in the context of the present matter, that the statement is fair comment upon facts which are true and in the public interest.

As far as the media is concerned, the *National Media Ltd v Bogoshi* case, *supra*, endorsed the additional defence, which allows the press and the media to establish that it was reasonable to have published the statement because of the circumstances of the case.

11. As far as truth and public benefit is concerned the defendant must show that the statement was true, or substantially true.

See *Crawford v Albu* SA 1917 AD 102 at 131.

As far as public benefit is concerned, generally speaking publication of the truth will be for the public benefit unless its publication was made *animo injuriandi*.

12. Where the media is concerned, their powerful position and the credibility that they enjoy among large sections of the community are factors that require editors and editorial staff to exercise a high degree of care in publication of matter that is potentially defamatory.

13. After the advent of the new Constitution and the fact that it protects not only an individual's right to his reputation and good name, but at the same time protects freedom of speech and freedom of the press, a balance has to be struck between these

competing rights. This was done in the decision of *Khumalo and Others v Holomisa* *supra* 419 C-D. The effect is that in addition to the standard defences, such as truth and public benefit, the press can also escape liability if the publication of the defamatory statement is justified as being reasonable in all the circumstances. The onus naturally rests on the defendant to prove that the publication is reasonable in all the circumstances.

14. In paragraph 43 of the judgment, at (424) the court said,

“However, the defence of reasonableness developed in that case does avoid a zero-sum result and strikes a balance between the constitutional

interests of plaintiffs and defendants. It permits a publisher who can establish truth in the public benefit to do so and avoid liability. But if a publisher cannot establish the truth, or finds it disproportionately expensive or difficult to do so, the publisher may show that in all the circumstances the publication was reasonable. In determining whether publication was reasonable, a court will have regard to the individual's interest in protecting his or her reputation

in the context of the constitutional commitment to human dignity. It will also have regard to the individual's interest in privacy. In that regard, there can be no doubt that persons in public office have a diminished right to privacy, though of course their right to dignity persists. It will also have regard to the crucial role played by the press in fostering a transparent and open democracy. The defence of reasonable publication avoids, therefore, a winner-takes-all result and establishes a proper balance between freedom of expression and the value of human dignity. Moreover, the defence of reasonable publication will encourage editors and journalists to act with due care and respect for the individual interest in human dignity prior to publishing defamatory material, without precluding them from publishing such material when it is reasonable to do so."

The court also quoted, with approval, the following passage in the Bogoshi judgment. See 415 F:

"If we recognise, as we must, the democratic imperative that the common good is best served by the free flow of information and the task of the media in the process, it must be clear that strict liability cannot be defended and should have been rejected in Pakendorf."

15. At 416 G-H, the constitutional court observed the following in the Khumalo case:

"Freedom of expression is integral to a democratic society for many reasons. It is constitutive of the dignity and autonomy of human beings. Moreover, without it, the ability of citizens to make responsible political decisions and to participate effectively in public life would be stifled."

The print, broadcast and electronic media have a particular role in the protection of freedom of expression in our society. Every citizen has the right to freedom of the press and the media and the right to receive information and ideas. The media are key agents in ensuring that these aspects of the right to freedom of information are respected. The ability of each citizen to be a responsible and effective member of our society depends upon the manner in which the media carry out their constitutional mandate."

The court went on to state, at 417 B:

"The media thus rely on freedom of expression and must foster it. In this sense they are both bearers of rights and bearers of constitutional obligations in relation to freedom of expression."

At para 24 (417) of the judgment, the court stated as follows:

"In a democratic society, then, the mass media play a role of undeniable importance. They bear an obligation to provide citizens both with information and with a platform for the exchange of ideas which is crucial to the development of a democratic culture. As primary agents of the dissemination of information and ideas, they are, inevitably, extremely powerful institutions in a democracy and they have a constitutional duty to act with vigour, courage, integrity and responsibility. The manner in which the media

carry out their constitutional mandate will have a significant impact on the development of our democratic society. If the media are scrupulous and reliable in the performance of their constitutional obligations, they will invigorate and strengthen our fledgling democracy. If they vacillate in the performance of their duties, the constitutional goals will be imperilled. The Constitution thus asserts and protects the media in the performance of their obligations to the broader society, principally through the provisions of s 16.”

16.The defendant has correctly argued that the plaintiff is a public figure who, on the evidence has been engaged in robust public discord, including harsh venomous criticism of other public figures. He has publicly attacked Nadine Gordimer, William Gumede, Judge Raymond Leon and others, and in doing so, has set a standard which legitimately constitutes an invitation to be used in judging him.

17.Our courts have laid down that, in interpreting defamatory statements, the court is to adopt the mindset of an ordinary reasonable lay person and give words their ordinary everyday meaning.

See Independent Newspaper Holdings v Suliman, 2004 (3) All SA 137 (SCA) paras 19 and 29 and Times Media v Niselow, 2005 (1) All SA 567 (SCA) paras 9 and 10.

18. As a matter of convenience in dealing with the evidence adduced, the second complaint will be dealt with first.

19.The defendant contends that the statement complained of is not defamatory, that it was true and its publication was in the public

interest. The defendant further submits that, in any event, the publication of the statement was reasonable in the circumstances and that it was published without any negligence.

20. In regard to the statement itself, the plaintiff contends that there is an innuendo in that statement, namely that he hounded or conducted a vendetta against persons who criticised him and in so doing conducted himself in an obsessive and unreasonable manner, and that he instituted the complaint against the SABC without justifiable or probable cause and he pursued that complaint in circumstances in which it would have been unreasonable for him to do so and in respect of which he should have desisted.

21. I find nothing defamatory in the passage complained of. I will deal more fully with the facts of the SABC complaint, but would observe that Barron’s statement about this complaint was probably inaccurate. The plaintiff did not pursue a complaint against the SABC because it unwittingly included someone charged with child abuse on their programme. It is more likely that he pursued a complaint against the SABC because the person it included in its programme referred to an allegation that had been made in a custody dispute that the plaintiff was alleged to have abused his [.....] children.

Any ordinary reader reading the text of the article published by the defendant would come to the conclusion that the plaintiff relentlessly pursued a complaint against the SABC because it had “unwittingly” included a person on a programme who had been charged with child abuse. To my mind, a complaint of this nature depicted the plaintiff as a person who obsessively defended the rights of children and that conduct does not carry any defamatory implication. If anything, that statement was laudatory of the plaintiff because he was pursuing a virtuous cause against the SABC for ineptly including a person charged with child abuse on a television programme. There is no clear implication in the statement by Barron that the plaintiff was unjustified in pursuing this complaint and I do not read that complaint as being defamatory. The word “unwittingly” could mean “innocently” but it could equally mean “stupidly” or “carelessly” in the context of the publication.

22. I also do not regard the word “obsessiveness” as being defamatory in the context of his criticism of political figures and in his defence of himself against those who are prepared to criticise him. There is nothing in the article to say that the plaintiff was obsessive in regard to justifiable criticism against him and I do not accept that it carries any defamatory innuendo.
23. If however I am wrong and there was some defamatory innuendo or meaning that could be attached to the above statement, I do not regard that statement as being anything other than true and of interest to the public.
24. The evidence in this matter disclosed that, on 18 June 2003, the SABC aired a programme on “parental alienation syndrome”

(PAS). The producers of the programme included the plaintiff’s [.....], a Mr. S., in that programme. At the time, it had become fashionable to give the PAS label to a syndrome commonly encountered by practitioners in the family law field. A parent who had been awarded custody of a child sometimes, for reasons other than the best interests of the child, pursued a policy of deliberately alienating that child from the non-custodial parent. This behaviour has become a problem with which the courts from time to time have had to deal with.

25. The programme concerned was aimed at debating this syndrome for the benefit of the viewers. It would appear that S. (that is his real surname) was brought in as a last-minute substitute as an “aggrieved parent” in the programme.
26. I have been referred to the transcript of the statement made by S., which appears at p.290 ff of Exhibit C. In the programme, S. made the following statement:

“The situation is that I felt that my children weren’t being looked after as I would have them, but there were some allegations of sexual abuse on the part of my ex’s [...] etc and I felt I had to get involved. I got involved with this Child Protection Unit etc and I brought a case to court, to the Supreme Court myself, but basically from the relationship there were difficulties, since there was”

This statement was made in the context of the question as to whether he had a difficult custody battle.

27. He went on to say that his [.....] had used the children to get back at him.
28. The plaintiff stated that he heard about this broadcast when friends and family advised him that they had seen S. on television and they apparently reported to the plaintiff what had been said. The plaintiff maintains that S.'s face was recognisable and that he was using his actual name, although it is quite common to use "S." as a nom de plume. He maintained that the SABC should apologise for this broadcast of defamatory matter and their introducing and allowing a person such as S. to appear on a programme of this nature.
29. I do not propose to comment on the rights or wrongs of the plaintiff's complaint against the SABC. The Broadcasting Complaints Commission heard that complaint. What is instructive, however, is the manner in which the plaintiff pursued his complaint against the SABC and the lengths to which he went to bring that complaint.
30. It is common cause that although the complaint was made in the plaintiff's [.....] name all the correspondence,

without exception, was authored by the plaintiff. He relentlessly pursued his complaint by writing letters on a daily basis, often more than once a day.

31. The complaint itself ran into almost 120 pages in length. The defendant's counsel submitted that the documentation exhibited the hallmark of "an unbalanced, paranoid and obsessed complainant". I agree. I found the correspondence

to show signs of excessive emotionality, inappropriate and provocative behaviour. I found that the plaintiff had an unreasonable expectation of especially favourable treatment and he was contemptuous and impatient with others. I found him to be haughty and arrogant not only in his manner of correspondence but also in his manner in court. He displayed a grandiose sense of self-importance and an unreasonable expectation of especially favourable treatment. He engaged in name-dropping and he purported to enjoy the patronage of people who occupy high positions in the corridors of power and influence in the new South Africa.

He listed among his "patrons" the Mandela family, former Minister Kader Asmal and President Thabo Mbeki.

32. He accused the SABC of having committed "several criminal offences", including contraventions of section 12 of the

Divorce Act, offences under the Child Care Act and contempt of court. At the outset, in his first letter of complaint, he

claimed that liability attached not only to the SABC but also to the producers of the programme. He demanded an apology and produced a script of the apology that had to be broadcasted, concluding that the SABC should advise the viewers that the producers of the programme had been instructed to undergo further training in the requirements of the sub judice rule and the principles of contempt of court as also in relation to Section 12 of the Divorce Act and the requirements of the Child Care Act.

33. In a letter written the following day he referred to the broadcast as constituting defamation involving “unmitigated tortuous

infliction of emotional distress”. He impeached the whole Board of the SABC, claiming that they were set on a collision course with criminal law. He went on to say that he intended to refer their conduct to the Human Rights Commission and the Gender Commission.

34. In another letter, he accused the SABC of airing the views of a “potential paedophile”. He said

“This occurrence is surely unprecedented in the global experience of public broadcasters”

(Exhibit C at p.16).

He consistently maintained that the directors of the SABC are equally to blame for what had happened as was the presenters and producers of the programme.

He stated in terms that he was referring the matter to the Scorpions and was immediately submitting a copy of his complaint to the relevant officials within the National Prosecuting Authority (Exhibit C, p.33).

He went on to prescribe the sentences which he felt would be appropriate in the matter, concluding that maximum penalties should be imposed, including prison sentences.

He extended his complaints to include legal advisers of the SABC, as also the presenter of the programme. He went on to say that after the complaint had been disposed of, he intended to refer the matter to the Law Society of the Northern Province to have the SABC’s legal adviser removed from the roll of attorneys (see Exhibit C, p.37).

35. In a letter dated 2 July 2003 (Exhibit C, p.39 ff), the plaintiff stated

“I despise name-dropping and object to the idea that who-one-knows should matter in any legal dispute ...”

The plaintiff, having disavowed any wish to “name-drop”, proceeded to respond to a demand he said was made via the SABC’s

Ms. Shibambo to “tell her who I am”. In replying to that demand, the plaintiff took the opportunity to mention, inter alia, that he had joined the law firm of Tiego Moseneke in 1994 (an issue which will be dealt with later in this judgment) and went on to mention Kader Asmal, Louise Asmal, President Nelson Mandela, Nadine Gordimer, the Irish Nobel Prize Laureat Seamus Heaney, Dr.

Vincent Maphai (the current chairperson of the SABC), Thabo Mbeki (who was then Deputy President). The letter itself is copied to then Ministers Kader Asmal, Essop Pahad and Mr. Bheki Khumalo (presidential spokesperson). He also placed on record that he intended to request the National Intelligence Agency to investigate the conduct of the producers of the programme.

36. Despite being asked not to do so, the plaintiff insisted on addressing further correspondence directly to Mr. Peter Matlare, the chief executive of the SABC, in which he made threats against various persons employed by the SABC.
37. In one of his letters, dated 21 July 2003, Exhibit C p.46 at p.47, he made threats to report his complaints to the Public Protector, the Human Rights Commission, the Commission for Gender Equality, various Ministers in the Government and the Minister of Education. In a letter dated 24 July 2003, he told Matlare (Exhibit C p.52) that he was handing his complaints over to the Scorpions and he insisted on being given two copies of the videotape of the offending broadcasts, threatening that if they did not do so it would constitute an obstruction of “my civil recourse and the criminal investigation”.
38. In a letter by the attorneys for the SABC a useful summary of the plaintiff’s excessive and outlandish behaviour is chronicled at p.53 ff of Exhibit C.
39. The threat by the plaintiff to refer this matter to the Scorpions is bandied about in a number of letters written by him to the SABC and to Peter Matlare in particular.
40. The actual complaint submitted to the Broadcasting Complaints Commission is an outlandish document that exposes the plaintiff’s excessive conduct in dealing with this objection by him to the television broadcast. As previously stated, this document runs from p.62 to p.181 of Exhibit C. In that document the plaintiff not only complains about the broadcast, but arrogates

to himself the prerogative to dictate to the Complaints Commission the kind of penalties that should be imposed.

41. The plaintiff complains about the conduct of some 25 people and institutions. Furthermore, the plaintiff demands that the Commission return 46 separate findings against the persons who he lists as offenders. He makes accusations of criminal conduct of various kinds, demanding wide-ranging relief against these people. He suggests that fines of R40 000,00 per person (aggregating almost a million Rand) should be imposed and suggests that imprisonment would be an appropriate penalty in certain cases.
42. A South African PhD student at Oxford University, Mr. James Myburgh, disclosed on a freedom of expression website that the plaintiff had been one of the complainants in the case upon which the Broadcasting Complaints Commission had ruled, and gave an internet link to the Broadcasting Complaints ruling.

43. His conduct unleashed a vindictive and venomous attack by the plaintiff upon Myburgh. He said that referring the public to the Commission's ruling revealed the identity of the children and he gave a convoluted explanation of how members of the public could acquire this knowledge. He pursued Myburgh and now accused him, too, of child abuse in correspondence both to him and to his supervisor, Professor Beinart, at Oxford University and to various other persons. He lodged a formal complaint with the Dean of the Oxford college where Myburgh was studying and, in an e-mail dated 10 June 2006 sent to Myburgh, he made the following statements about Myburgh (see Exhibit C, p.346, paras 7, 8 and 9):

"You abused a [...] child, then aged [...], in a manner fairly to be described as depraved.

You further abused a [.....] child, then aged [.....], in a manner fairly to be described as depraved.

You abused an adult [...] in a manner constituting criminal conduct in that it violated the criminal laws of South Africa."

44. I find the plaintiff's conduct in the above respects to be vindictive and venomous and I agree with the defendant's counsel's suggestion that he was obsessive in his relentless pursuit of Myburgh. He was cross-examined in respect of this conduct and it was suggested to him that his complaints and conduct was zealous and "over the top". Initially he denied this, but later conceded it was perhaps over the top and later said that, on reflection, his complaints were "laughable".

I do not find anything amusing in the manner in which these complaints were formulated and the way he pursued them.

Throughout his cross-examination he denied that he had relentlessly pursued the "wrongdoers".

45. In my view, the plaintiff's conduct was obsessive and I can quite believe, having regard to this behaviour on his part and other behaviour which I will set out later, that few people would be prepared to be quoted on him as most of them would be intimidated and fearful of him. I would consider that his pursuit of the SABC was "relentless".
46. The plaintiff's counsel submitted that the article as a whole had nothing nice to say about the plaintiff, save for factual details concerning his academic qualifications. He described the article as a "character assassination". For the reasons set out in this judgment, I consider that any harm done to the plaintiff's reputation was self-inflicted.
47. In the result, I would consider that the publication of these allegations was justified as true and in the public interest.

In any event, I consider that the Sunday Times acted reasonably in publishing these statements not only because they represented fair comment on the plaintiff, but because they were borne out by Barron's research. In addition, Barron was known to the Sunday Times to be a careful and meticulous journalist. He testified that most of the people to whom he had spoken did not want to be identified because they were afraid of the plaintiff and the way he would react to criticism.

48. In all the circumstances of the matter, I consider that the probabilities favour Barron's evidence in this respect.

In any event, the complaint against the SABC was known and did receive publicity.

49. Finally, and for the reasons already set out, I consider that the defendant's publication of the statement complained of was not negligently done and I do not consider that there was any fault on the defendant's part sufficient to render it liable for damages for defamation.
50. I now propose to deal with the plaintiff's complaints as contained in the passage complained of in the first complaint.
51. It is common cause that the statement itself is defamatory. The question is, has the defendant succeeded in showing that the publication was nevertheless true and in the public interest, or that its publication was reasonable in the circumstances, or that its publication was not negligent?
52. In his pleadings, the plaintiff has relied upon three innuendos contained in the publication. These are:
- (a) that the passage suggests he has been engaging in private business which created a conflict of interest for his employers;
 - (b) that he conducted himself in a manner which was dishonest and/or unbecoming;
 - (c) that he was not a fit and proper person to be an attorney and/or to be employed by a firm of attorneys.
53. The plaintiff has urged me to find that the statement that "in effect he was told to leave" when it was found that he had been making private business arrangements that created a conflict of interest for Deneys Reitz, was false. To my mind, that sentence must be read together with the last two sentences that I have referred to above, namely that
- "Roberts says he left because he was "bored" ". Either way, his colleagues who had found him insufferable cheered his departure."*

On an ordinary reading of the above passage together with the last two sentences, the words "in effect" which introduced the statement that he was told to leave qualifies that statement. On an ordinary reading, the writer is saying that the plaintiff was effectively told to leave and it is conceded by the writer that the plaintiff had a different version of his leaving. This different version was clearly acknowledged by the writer who went on to say that, either way, his colleagues found him insufferable and were pleased to see him go.

54. It seems that the statement complained of was substantially true and the publication was not unlawful. It was certainly established in the trial that the plaintiff had accepted an appointment with the Whitney Houston organisation during the visit by Mr. Platt to South Africa in the period from 7 to 9 October 1994.

55. By accepting that appointment, the plaintiff created the risk of a conflict of interest between himself and his employers, Deneys

Reitz.

56. I have been referred to a number of letters written by the plaintiff during October 1994, after his appointment, that demonstrate that he had a substantial role as an executive member of Houston Enterprises.
57. The most significant of these letters is dated 18 October 1994, which is to found in Exhibit B(1) at p.81(1) where he wrote to the firm of attorneys, Moseneke & Partners and in particular to Tiego Moseneke, the senior partner of that firm. In that letter he wrote as follows:

“Since we met a couple of weeks ago Whitney Houston Enterprises, Inc. has appointed me their South Africa Projects Director. As you may know, Ms. Houston is the largest individual (i.e. non corporate) investor in Egoli Beverages, the entity that is reintroducing Pepsi to the South African market. Additionally, Houston Enterprises contemplates a range of ongoing involvements in South Africa both within and beyond the entertainment industry.

Houston Enterprises is interested in working with you on a number of projects, and I am authorized to take our discussions further.

I suggest that we meet soon.”

58. According to the pleadings, the plaintiff moved straight from Deneys Reitz to work for the firm Moseneke & Partners on the date of his resignation on 7 November 1994. In cross-examination he changed that evidence and then remembered that in fact he had not immediately moved across to Moseneke & Partners but had stayed with Whitney Houston Enterprises until the end of her tour in South Africa and only joined that firm some time later. He was at pains to assure the court that no work for Houston Enterprises was passed on to the firm Moseneke & Partners.
59. The plaintiff’s case was that he only took the appointment with Houston Enterprises after he had cleared his appointment with Deneys Reitz and with Mr. Raney (one of its directors) in particular. Raney denied that evidence and I prefer his evidence on this issue.
60. I found the plaintiff to be evasive, argumentative and an opportunistic witness. He spent more time trying to score points off the cross-examiner than in answering the questions truthfully. He was unconvincing and his evidence was shown to be contradictory.

I agree with counsel’s submission that his version was completely discredited. He was forced, in cross-examination, to concede that a meeting that he originally claimed had taken place with himself, Raney and Platt, did not take place. His

explanation for his contradictions and retraction of previous evidence was unconvincing. That earlier evidence was untruthful.

61. The new version that he then presented was however equally unacceptable and was similarly discredited in cross-examination. In a letter from Platt to Raney dated 17 October 1994 the new version was flatly contradicted. In Exhibit B2, p.80, third paragraph, the opening sentence reads:

“You should also be aware that because of Ronald’s capabilities we have appointed him as acting director of our client’s projects in South Africa”.

This is quite contrary to the plaintiff’s version in cross-examination that Platt had telephoned Raney in the course of a

meeting with him to inform him that the plaintiff had been given this appointment and that Raney had given his blessing to that

appointment.

62. Counsel for the defendant is correct in submitting that this language is incompatible with the plaintiff’s second version because it merely notified Raney of a deal which had already been effected and was inconsistent with the plaintiff’s version that Raney had already consented to this appointment. It follows therefore that the plaintiff was secretly appointed to act

for the Whitney Houston group and that Deneys Reitz was only advised of this situation sometime later.

63. The plaintiff’s conduct in this regard was quite improper. His letter to Moseneke at that time was similarly improper. He was in effect hawking an offer of work to a competing firm of attorneys. It is fair comment to suggest that the Law Society

would at least investigate a South African lawyer for conduct of this nature.

64. I find that the plaintiff’s various versions of the circumstances of his departure from Deneys Reitz were contradictory and untrue. In his pleadings and in a letter of demand dated 3 October 2004, Exhibit B(2) p.343 at p.344, the plaintiff alleged that he resigned from Deneys Reitz because he wished to assist an emerging historically disadvantaged legal firm. In evidence in chief he confirmed this version. Under cross-examination, he began to adapt that evidence because of the letter dated 18 October 1994 (quoted in full above), where he was hawking his connection with Whitney Houston in breach of his duties to Deneys Reitz. At the end of the day, he retracted the statement that he moved straight from the Deneys Reitz payroll to the payroll of Moseneke & Partners.

65. The versions he gave in court are also contradicted by his letter to Lindley dated 7 November 1994, Exhibit B(1), p.105, where he explained to Lindley his reasons from resigning from Deneys Reitz. In that letter he said nothing about joining an historically disadvantaged legal firm and he made no mention of what he described as Raney’s unacceptable conduct at the meeting at the Carlton Hotel. The letter states in clear terms that his reason for leaving Deneys Reitz was because of the exciting new opportunities that had been offered to him by

the Whitney Houston organisation.

66. In the circumstances I hold that the statements contained in the first complaint are substantially true. The plaintiff was in effect told to leave Deneys Reitz because he was making private business arrangements. He created a conflict of interest between himself and Deneys Reitz. That conduct is serious and a South African lawyer would have been exposed to steps to have him censured by the Law Society and, depending on its findings, might have led to his suspension from practice.
67. In any event, I consider that the statement complained of was reasonable in all the circumstances of this matter and represent a fair reflection of the information that Barron had obtained in his investigations. It was reasonable for Barron to rely on the facts that he had collected in connection with this matter and although Raney does not directly support Barron in this respect, there were other partners and other people who had given Barron information in regard to the matter. Raney did confirm that Deneys Reitz regarded Plaintiff's resignation as a problem that had solved itself.
68. The plaintiff complains that Barron had not put this version to him and had not given him an opportunity to give his version as to why he left the firm.

In the first place, it is quite clear that when the plaintiff was asked why he left, he said he left because he was bored. I see no merit in the suggestion that this explanation should not have been accepted as the plaintiff's explanation and that Barron should have gone further and put to him that he had been asked to leave because of the conflict of interest which he had created for himself by accepting the Whitney Houston appointment.

In any event, Barron published the plaintiff's explanation, which turned out to be false. Furthermore, even in court, with the benefit of hindsight and access to all the documentation relating to this matter, the plaintiff gave contradictory versions and explanations concerning this incident. He was discredited in cross-examination and one can only wonder what other explanations he might have given to Barron.

69. It was put to Barron that he should have put Raney's version to the plaintiff. I accept his explanation that he was concerned that Raney would be bullied and intimidated by the plaintiff if his identity was disclosed. Indeed, the plaintiff traced Raney through Barron's telephone records and did threaten and harass him. The plaintiff's conduct in using the telephone records (which he obtained by a subpoena process) for this purpose is questionable.
70. Finally and in any event, the defendant acted quite reasonably in publishing a researched article by Barron. It was entitled to rely upon him as a careful researcher based on its own knowledge and experience of him as a reliable and meticulous journalist. Ms. Oppelt, the editor of Insight and Opinion section of the Sunday Times, stated that Barron was one of the most professional freelance journalists she had known. She said that he was meticulous and detailed in the work that he did and his work was excellent and fully professional. The

defendant had frequently used him to write articles. I accordingly hold that the defendant acted reasonably in all the circumstances in its decision to publish Barron's article. The article was also published without negligence or fault on the defendant's part.

71. In the result, I am not satisfied that the defendant is liable to the Plaintiff in damages for defamation in respect of either of the two passages complained of in the article. The plaintiff's claim for damages is accordingly dismissed with costs, such costs to include the costs occasioned by the employment of two counsel.
72. In respect of the interdict application, the question of costs was directed to stand over for determination in this matter.
73. Initially, I was of the view that inasmuch as the defendant had given an undertaking to the plaintiff to remove the offending article from its website and inasmuch as it had failed to do so, the plaintiff was entitled to approach the court for an interdict. It seemed to me that, whether or not the publication was defamatory, the plaintiff had no other recourse but to go to court to obtain an interdict to prevent further publication of the article, notwithstanding the defendant's undertaking to ensure that this article would not be posted on the website again.
74. Having read the affidavits filed in the interdict application, I however consider that the further publication of the article on the website was unintended and was the result of a technical error on the defendant's part and the manner in which the Internet publication had been programmed. In the result, I cannot find that the defendant knowingly breached its undertaking not to allow the offending article to be republished on the web. The publication occurred as a consequence of a bona fide and unintentional error and not as a consequence of any blameworthy conduct on the part of the defendant.

The defendant's submission that if neither section of the article was defamatory and if it follows that the original publication of the article was entirely lawful, its republication on the Internet should be equally lawful.

75. I am persuaded that a complete defence to the plaintiff's claim for defamation should also result in the dismissal of the interdict application because the court hearing the interdict would ultimately have dismissed that application once it had been proved that there was a complete defence to the defamation claim. I did not understand the plaintiff's counsel seriously to challenge this line of reasoning.

In the result, the plaintiff is also ordered to pay the costs of the interdict application, such costs to include the costs occasioned by the employment of two counsel.

Weinkove, A.J.

8 January 2007

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