

SOUTH AFRICA / JUDGMENT

Rudman v Claassen (442/2010) [2010] ZAECPEHC 22 (25 May 2010) [2010] ZAECPEHC 22

COURT

Eastern Cape High Court, Port Elizabeth

BEFORE

N Dambuza

CASE / FILE NUMBER

442/2010

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IN THE HIGH COURT OF SOUTH AFRICA

(EASTERN CAPE – PORT ELIZABETH)

Case No.: 442/2010

Date heard: 4 May 2010

Date delivered: 25 May 2010

In the matter between:

LINDA RUDMAN Plaintiff

and

DELIA CLAASSEN Defendant

J U D G M E N T

DAMBUZA, J:

The plaintiff sues the defendant for damages of R150,000.00 in respect of certain words written by the defendant of and/or concerning the plaintiff. The plaintiff contends that an e-mail in which these words are expressed is defamatory.

The plaintiff is a self employed businesswoman who conducts a business known as T & L Transport from 101 Lyme Road, St Francis Bay. The defendant is also a businesswoman and she is employed by a business known as Cape Couriers which operates from 6a Printers Way Montagu Gardens, Cape Town.

In the particulars of claim the plaintiff states that on 13 November 2009 the defendant sent her an insulting, humiliating and degrading e-mail in which she (the defendant) called plaintiff a “cow, an ignorant imbecile, an ignoramus, a five year old and childish.” In the alternative the plaintiff contends that the following passages in the e-mail were degrading humiliating and insulting of her:

“Never before have I had to deal with such an ignorant imbecile who has no knowledge of business etiquette whatsoever . . . , who the hell do you think you are, little fish? . . . how old are you, five years perhaps? . . . you ignorant rude cow . . . I hope you don’t treat your staff like this cow, because what goes around comes around, ignoramus . . . now get a lawyer as well as a life.”

The e-mail containing the words complained of which is attached to the summons is relatively short. The full content thereof is as follows:

“Never before have I had to deal with such an ignorant imbecile who has no knowledge of business etiquette whatsoever, no knowledge of the procedures that have to be followed and who believes that by irritating so called creditors with mindless phone calls, that this behaviour will initiate some kind of favourable attention which will result in payment.

Speediously? There is no such word, didn’t you mean speedily? Time to get a dictionary!

I did have every intention of paying the account to ameliorate this situation and reach a compromise. I assume that you are cognisant of the fact that I am away on business and do not have access to your account, as was explained to you.

Due to your insults and comments, I will definitely not pay this account and will see you in court, you do not have a leg to stand on and you know it. Who the hell do you think you are, “little fish?” How old are you, five years perhaps. You ignorant, rude cow, I started this business from scratch so I don’t know where you get this crap fish from and what goes around comes around, watch your back then and get a life.

NO MORE CHILDISH E-MAILS COW, how dare you insult me and ostensibly have to copy my staff in? I hope you don’t treat your staff like this cow, because what goes around comes around, ignoramus.

Now get a lawyer as well as a life.”

According to the plaintiff the defamatory words were communicated to her in Port Elizabeth.

The e-mail was sent to the plaintiff in the context of an exchange of e-mails between the parties about payment of an outstanding account by the defendant’s employer to the plaintiff’s business. It is addressed to the plaintiff and is “copied” to the defendant’s colleagues at Cape Couriers, namely, Riaan, John and Loraine.

Mr Mullins who appeared on behalf of the plaintiff submitted that the words and/or expressions used by the defendant go beyond mere abuse, they constitute a vicious attack on the plaintiff’s professional integrity and competence

The summons was served on a certain Mr White, a manager at the defendant's place of employment on 24 February 2010. No appearance to defend is filed of record and the defendant was not in attendance when the matter came before me.

The plaintiff is the only person who testified at the hearing. Her evidence was that she is the owner of D & L Transport and as such she handles the finances of the business

including preparation of invoices and collection of payments from clients of the business.

According to her, sometime during May or June 2009 D & L Transport rendered some services on behalf of Cape Couriers. The plaintiff duly issued an invoice to Cape Couriers for an amount of R7,500.00 of which only R750.00 was paid. It is as a result of this failure by Cape Couriers to pay the invoice that the parties started exchanging e-mails.

According to the plaintiff's further evidence, subsequent to the service of the summons, she received two further e-mails from the defendant. In the first one the plaintiff stated that:

"A counter claim will be lodged against you in the High Court of Port Elizabeth for defamation, any action brought about you will be defended in the strongest possible fashion."

In the second one she said:

"Read your comments and insults below and expect a counter claim sooner or later."

There is, however, no counter claim filed of record.

As a general rule publication of a defamatory statement is prima facie wrongful.¹ It is a question of law whether the words complained of are reasonably capable of conveying to a reasonable reader a meaning

which defames the plaintiff.² The test is: what meaning would an ordinary reader of reasonable intelligence attribute to the words in the context of the article as a whole. ³

It seems to me the entire e-mail is defamatory as such. A person of reasonable intelligence reading it would gain the impression that the plaintiff

is a stupid person and a person of low business acumen who does not deserve to occupy the position in business that she currently

occupies. The evidence was that the defamatory e-mail was also communicated to the plaintiff's husband who works in the same business as the plaintiff. My view is that the e-mail could cause the husband to gain the impression that the plaintiff was not coping with her duties in the business.

I agree that the words “ignorant imbecile, no knowledge of business etiquette, mindless phone calls, ignorant rude cow,” are insulting on their own and that in the context of the whole document the words are defamatory of the plaintiff. Further, in the context of the document, reference to the plaintiff as a “little fish and five years (old)” would, in my view be understood by a reader of average or reasonable intelligence to mean that the plaintiff is a small, insignificant player in the world of business and that she is immature compared to her counter-parts.

I am satisfied therefore that the contents of the e-mail are defamatory of and concerning the plaintiff.

The plaintiff testified that she was extremely upset by the contents of the e-mail; that she felt threatened by it and that she cried for days. It was her evidence that she has since become self conscious in the way she conducts business and does not call the business debtors anymore. That the plaintiff was hurt by the contents of the e-mail became evident as she testified in court. She became tearful and her voice was filled with emotion.

From the evidence it appears that the defendant is the main person in her business. The image of the business depends, to a large extent, on her. The manner in which those who do or are likely to do business with her perceive her, becomes relevant. I am mindful that publication of the e-mail was limited to a few colleagues of the parties. But then these are the people to whom the plaintiff's

image is most relevant.

It also seems to me that the insults were not justified. This is so even in the light of the evidence by the plaintiff she had, in a previous e-mail, referred to the defendant, as “obnoxious” and “unhelpful”. The matter is aggravated by the failure to tender an apology even after the summons was served.

Having considered all these factors my view is that an award of R50,000.00 would be reasonable in this case.

On the question of costs it was submitted on behalf of the plaintiff that because of the importance of the matter to the plaintiff and the fact that she did not anticipate that the matter would not be defended, it was wise and reasonable for the plaintiff to institute proceedings in this Court rather than the Magistrate's court. Whilst I am mindful of the fact that there is no evidence that there was actual damage to the plaintiff's business as a result of the defendant's conduct I do consider it relevant that in light of that possibility it was reasonable of the plaintiff to institute proceedings in this Court.

The following order shall therefore issue:

The defendant is ordered to pay to the plaintiff, as damages, an amount of R50,000.00;

Interest shall be payable on the said amount at the legal rate with effect from 14 days as from the date of this judgment;

The defendant shall be liable for the plaintiff's costs.

N. DAMBUZA

JUDGE OF THE HIGH COURT

Appearances:

For the applicant: Adv. N.J. Mullins instructed by Clark & Erasmus Inc.

For the respondent: No Appearance

1 Amler's precedent of pleadings, 6th edition at 134

2 Sindani v Van der Merwe

[2002] 1 All SA 311, 2002 (2) SA 32 (SCA)

3 Sindani (supra) at 37

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