

SOUTH AFRICA / JUDGMENT

Suleman v Ashoms (27341/2021)

[2024] ZAGPJHC 696 (10 July 2024)

[2024] ZAGPJHC 696**COURT**

South Gauteng High Court, Johannesburg

BEFORE

Ford

CASE / FILE NUMBER

27341/2021

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Policy**FLYNOTES:****CIVIL**

LAW – Defamation – Social media –

Defendant

making statements on social media channels – Court considering standing of plaintiff as international church minister

– Widespread appeal of defendant's publications –

Skepticism often associated with social media

publications –

Defendant not attempting to apologise – R35,000 damages and letter of apology to be published in newspaper.

IN

THE HIGH COURT OF SOUTH AFRICA

GAUTENG

LOCAL DIVISION, JOHANNESBURG

Case No: 27341/2021

1. REPORTABLE:

NO

2. OF INTEREST TO OTHER

JUDGES: NO

3. REVISED: NO

10 July 2024
In the application

between:

APOSTLE
JOHNSON SULEMAN
Plaintiff
and
SOLOMON
ASHOMS
Defendant

JUDGEMENT

FORD AJ,

Introduction

1. The plaintiff is Apostle Johnson Suleman, an international minister of the gospel and the general overseer of the Omega Fire Ministries,

worldwide. The ministry operates from 2[...] H[...] Street, M[...] T[...] Johannesburg.

2. The defendant is Solomon Ashoms, a journalist residing at 5[...] L[...] Avenue, Sunninghill Gardens, Johannesburg.
3. On 10 July 2021, the plaintiff instituted action out of this court against the defendant, claiming that the defendant defamed his good name and character, and that he suffered damages as a result.
4. The defendant elected not to defend the action, causing the plaintiff to proceed with the action on a default basis.

The plaintiff's claim of defamation

5. The plaintiff's case was presented both by way of argument and his personal testimony, which is summarised below.
6. On 11 March 2021, in Johannesburg, the defendant via his social media handle and/or programme known as Solom's Temple, made a presentation on his YouTube channel, which was shared live on his Facebook account, Twitter and Instagram handles, titled: "Apostle Johnson Suleman got a corrupt apology".
7. On 30 April 2021, the defendant via Solomon's Temple, released, according to the plaintiff, a damning publication, via the aforementioned media channels, titled "Johnson Suleman bribed Pastor with \$60,000 for apology".
8. The aforementioned publications are, according to the plaintiff, malicious and fallacious and contained remarks capable of damaging

his reputation and right to a good name, and that of the Omega Fire Ministries, worldwide. An institution which the plaintiff claims is reputable and one which the plaintiff emblemizes.

9. The plaintiff claims that the defamatory nature of the defendant's publications, were wrongful and unlawful as he did not commit the things the defendant accused him of. The plaintiff claims that the defendant called him unprintable names, as evinced

through his social media outlets.

10. As a direct consequence of the defendant having defamed him, the plaintiff testified that, he sustained injuries, including defamation of his character, his right to his good name, and had his dignity impaired.
11. The plaintiff testified that he has suffered damages in the amount of R10,000 000.00 (Ten million rand) calculated as follows: R9,000 000.00 for defamation of his character and R1,000 000.00 for contumelia.

12. The plaintiff seeks as relief:

12.1. payment of damages in the R10,000 000.00 (Ten million rand);

12.2. letters of apology from the defendant, to be published in any South African and Nigerian national newspaper; and

12.3. a retraction of the publications.

Analysis

13. The elements of the delict of defamation in our common law are these: (a) the wrongful and (b) intentional (c) publication of (d) defamatory statement (e) concerning the plaintiff. It is not a requirement of delict under our common law that the statement be false. A plaintiff need only establish that a defendant has published a defamatory statement concerning him. This triggers the presumption that the publication was both unlawful and intentional. A defendant seeking to escape liability for defamation is required to raise a defence which rebuts unlawfulness or intention[1].
14. It is trite that the test for determining whether a statement is defamatory is an objective one. The applicable standard being, that the plaintiff's estimation in the eyes of a reasonable ordinary and right-thinking reader, is compromised.
15. In *Johnson v Beckett and Another*[2], the SCA emphasized, that the reasonable reader is a person who gives a reasonable meaning to the words ascribed within the context of the document as a whole.
16. In the matter before me, I only have the plaintiff's uncontested version. I have no hesitation in accepting the credibility of the plaintiff's version that the publications of the defendant defamed him and his ministry.

17. The allegations that the plaintiff allegedly sexually abused actresses appear to have been incorporated in the default judgment affidavit, but does not accord with the pleadings in the main action. This does not, in my view, detract from the plaintiff's pleaded case.
18. Social media provides fertile ground for the mushrooming of self-acclaimed journalists, some of whom, with a YouTube Channel under their belts, consider themselves, at times, foolishly so, as journalists of the highest order, unfettered, unrestrained, and accountable to nobody. It is precisely the lack of regulation, that seems to justify the relentless publishing of defamatory content, without any real or significant consequences, that makes this practice rather attractive. This judgment will serve as a wake-up call for those wrapped up in that folly.
19. I am satisfied, having considered the evidence, that the plaintiff proved that he was defamed by the defendant's publications.
20. Our courts have held, in a plethora of decisions, that compensatory awards are intended to compensate the plaintiff for the injury to his reputation, integrity and dignity. And as such, awards do not serve a punitive function, and are characterized in the main by low monetary amounts. This principle has been cited with approval in various decisions.
21. In *Mogale v Seima*[3] the SCA held as follows:

As to the general approach to quantum, there are many dicta that create the impression that compensation may be awarded as a penalty imposed on the defendant and that the amount is not only to serve as compensation for the plaintiff's loss of dignity, for example *Die Spoorbond and another v South African Railways* 1946 AD 999 at 1005. These dicta were put in context by *Didcott J in Fose v Minister of Safety and Security* [1997] ZACC 6; 1997

(3) SA 786 (CC) at 830 para [80] when he said the following:

'Past awards of general damages in cases of defamation, injuria and the like coming before our courts have sometimes taken into account a strong disapproval of the defendant's conduct which was judicially felt. That has always been done, however, on the footing that such behaviour was considered to have aggravated the actionable harm suffered, and consequently to have increased the compensation payable for it. Claims for damages not purporting to provide a cent of compensation, but with the different object of producing some punitive or exemplary result, have never on the other hand been authoritatively recognised in modern South African law.'

In a like vein *Hattingh J* said in *Esselen v Argus Printing and Publishing Co Ltd and others* 1992

(3) SA 764 (T) at 771F-I:

'In a defamation action the plaintiff essentially seeks the vindication of his reputation by claiming compensation from the defendant; if granted, it is by way of damages and it operates in two ways – as a vindication of the plaintiff in the eyes of the public, and as conciliation to him for the wrong done to him. Factors aggravating

the defendant's conduct may, of course, serve to increase the amount awarded to the plaintiff as compensation, either to vindicate his reputation or to act as a solatium. In general, a civil court, in a defamation case, awards damages to solace plaintiff's wounded feelings and not to penalise or to deter the defendant for his wrongdoing nor to deter people from doing what the defendant has done. Clearly punishment and deterrence are functions of the criminal law, not the law of delict. Only a criminal court passes sentence with the object of inter alia deterring the accused, as well as other persons, from committing similar offences in future; it is not the function of a civil court to anticipate what may happen in the future or to 'punish' future conduct (cf *Lynch v Agnew* 1929 TPD 974 at 978 and *Burchell The Law of Defamation in South Africa* (1985) at 293).'

22. In determining damages in a defamation matter, the court must have regard to both the nature and extent of the defamatory statements, in addition to the extent of the circulation of, and the effect the publication had on the plaintiff.[4]
23. In *Gelb v Hawkins*[5], the computation of compensation in a defamation case was said to: in the main to contumelia (meaning contempt or insult), but does not overlook the elements of loss of reputation, and penalty; which means that on the facts of the case, the plaintiff's humiliation, and not loss of reputation, was the major factor in deciding quantum.[6]
24. In *Le Roux v Dey*, the Constitutional Court reduced the amount of R45,000.00 ordered by the High Court to R25,000.00 for defamation[7].
25. In *Tuch v Myerson*[8], the Supreme Court of Appeal awarded damages in the amount of R30,000.00 for defamation.
26. In *GQ v Yedwa and Others*[9], the High Court awarded an amount of R10,000.00 for injuria in November 1994.
27. The award I make below, is in keeping with the above dicta. I am not satisfied that the claim as advanced by the plaintiff comes anywhere near the R10million that the plaintiff sought as relief. Nor do I believe, in light of the amount I award for damages, that the defendant be ordered to pay the plaintiff's costs on the High Court scale.
28. The plaintiff has also sought an apology from the defendant. In this regard, I point out what the Constitutional Court *Dikoko v Mokhatla*[10] said in this regard:
"....whether or not the amende honorable technically still forms part of our law, it is important that once an apology is tendered as compensation or part thereof, it should be sincere and adequate in the context of each case. When considering the purpose of compensation in defamation cases the true value of a sincere and adequate apology, the publication of which should be as prominent as that of the defamatory statement, and or a retraction as a compensatory measure restoring the integrity and human dignity of the plaintiff, cannot be exaggerated."
29. And at paragraph 69, the court said:

The focus on monetary compensation diverts attention from two considerations that should be basic to defamation law. The first is that the reparation sought is essentially for injury to one's honour, dignity and reputation, and not to one's pocket. The second is that courts should attempt, wherever feasible, to re-establish a dignified and respectful relationship between the parties. Because an apology serves to recognize the human dignity of the plaintiff, thus acknowledging, in the true sense of ubuntu, his or her inner humanity, the resultant harmony would serve the good of both the plaintiff and the defendant.

30. In making the compensatory award in favour of the plaintiff, I have considered the plaintiff's standing, the platforms utilised by the defendant to publish the defamatory statements about the plaintiff, the widespread appeal that the defendant's publications attract, the skepticism often associated with social media publications and the fact that the defendant has not made any attempts to apologise for the defamatory posts.
31. The relief sought by the plaintiff in respect of the defendant having to publish an apology in a Nigerian newspaper is not competent for this court to grant.
32. In the result, I make the following order.

ORDER

1. The defendant is ordered to pay the plaintiff an amount of R35,000.00 (thirty-five thousand rand) as damages for publishing defamatory allegations about the plaintiff;
2. The defendant is ordered to retract the defamatory publications, within 21 (twenty-one) days of this order;
3. The defendant is ordered to publish a letter of apology to the plaintiff in a South African national newspaper, within 21 (twenty-one) days of this order;
4. The defendant is ordered to pay the plaintiff's costs on the Magistrates Court scale.

B. FORD

Acting Judge of the High Court

Gauteng Division of the High Court, Johannesburg

Delivered: This judgment was prepared and authored by the Judge whose name is reflected on 10 July 2024 and is handed down electronically by circulation to the parties/their legal representatives by e mail and by uploading it to the electronic file of this matter on CaseLines. The date for hand-down is deemed to be 10 July 2024.

Date of hearings: 7 March 2024

Date of judgment: 10 July 2024

Appearances

For the applicant: Adv. I. Nwakodo

Instructed by: Ogbede Attorneys

- [1] Khumalo and Others v Holomisa [2002] ZACC 12[2002] ZACC 12; ; 2002
(5) SA 401 (CC) at para 18.
- [2] (104/90)
- [1991] ZASCA 175; 1992 (1) SA 762 (AD); [1992] 1 All SA 383 (A) (28 November 1991)
- [3] (575/2004)
- [2005] ZASCA 101; 2008 (5) SA 637 (SCA) (14 November 2005) para 10-11
- [4] Dikoko v Mokhatla (supra) at para 101.
- [5] 1960
- (3) SA 687 (A) at para
- [6] At 693 H
- [7] Le Roux v Dey 2011
- (3) SA 274 (CC)
- [8] 2010
- (2) SA 462
- [9] 1996
- (2) SA 437 (TK)
- [10] 2006
- (6) SA 235 (CC); 2007 (1) BCLR 1 (CC) (3 August 2006) para 67

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