

SOUTH AFRICA / JUDGMENT

Coetzee v Janse van Rensburg (31884/2018) [2020] ZAGPPHC 451 (19 August 2020) [2020] ZAGPPHC 451

COURT

North Gauteng High Court, Pretoria

BEFORE

M Kumalo

CASE / FILE NUMBER

31884/2018

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REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA NORTH

GAUTENG DIVISION, PRETORIA

CASE NO: 31884/2018

Date 19/8/2020

MARIO COETZEE

Plaintiff

and

HELENA BERNADIEN JANSE VAN RENSBURG Defendant

JUDGMENT

KUMALO, AJ

Introduction

1. This matter came before me on 13 March 2020 as a rule 30 urgent application brought by the defendant Ms. Helena Janse Van Rensburg to set aside what she regarded as an irregular step in the proceedings.
2. On 9 March 2020, the Plaintiff unilaterally and without communicating and/or negotiating with the defendant and or her legal representative sought to remove the matter by filing a notice of removal to remove the matter from the civil trial roll of 13 March 2020.

3. According to the documents on the court file, the Plaintiff enrolled the matter on 19 October 2019 for trial to commence on Friday 13 March 2020 and according to the defendant's practice note, the matter was to last for two (2) days.
4. On the urgent hearing of the matter, the Defendant was represented by attorney Mr. Anton Van Staden of Anton Van Staden Attorneys and the Plaintiff was represented by Advocate H.W. Smith instructed by Mario Coetzee Attorneys.
5. I granted an order declaring that the Plaintiff's Notice of Removal dated 9 March 2020 to remove the matter from the Roll an irregular step and set it aside.
6. I further ordered the Plaintiff to pay the costs of the urgent application instituted by Defendant on an attorney and client scale including the costs of the surveillance conducted by the Plaintiff.
7. The Notice of Removal was in clear contravention of Rule 7(7) and (8) of the Rules of this Court which provide as follows:
 - 7.1 "7(7) If any trial case which has been set down for hearing is settled or if the parties agree that the case be postponed, the party who caused the matter to be set down, or his attorney, shall forthwith notify the registrar thereof, and forthwith cause a notice of removal or postponement to be filed.
 - 7(8)(a) A case which has been set down may be withdrawn from the roll on such conditions as may be agreed upon between the parties by means of a written notice to the registrar signed by all the parties or their attorneys.
 - 7(8)(b) Subject to the provisions of paragraph (a), a case may be withdrawn from the roll only with the leave of the court and on such conditions as the court deems fit."
8. None of the above conditions were complied with. Neither agreement was negotiated nor reached with the Defendant as envisaged in the applicable rules nor did the Plaintiff seek this court's indulgence. He simply filed his notice of removal without any due consideration of the above rules.
9. To further compound the matter, when Defendant's attorneys pointed out to the Plaintiff that the step he had taken was irregular and indicated to him that they intend to bring an urgent application should he fail to withdraw it, the response thereto was a threat that should she proceed with her urgent application, he would seek a punitive order against the Defendant.
10. I am not so clear as to the reasons that Plaintiff thought he would be entitled to a punitive cost order against the Defendant in circumstances that he ought to have known that the step he had embarked upon removing the matter from the roll was irregular. One can speculate that it must have been an intimidation ploy.

11. The reason given by Plaintiff to seek to remove the matter from the roll was that he at the time was being attended to at a medical institution without disclosing what medical institution that would be. All that was said in the relevant correspondence was that the necessary medical certificate will be forwarded as soon as it was received from the Plaintiff.
12. Defendant disputed the above and went as far as hiring a private detective to conduct a surveillance of the Plaintiffs movements during that period.
13. This Court was provided with photographs that indicated Plaintiff being at his office and business being as usual, contrary to the assertion that he was incapacitated needing medical attention.
14. The above were not refuted by Plaintiff and/or his counsel during the urgent hearing of this matter.
15. It is for the above that this Court found it appropriate to order the Plaintiff to pay the costs of the urgent application on an attorney and client scale and that he should pay the costs of the surveillance and ordered the matter to proceed without further delay. The Court ordered the matter to proceed from the 15th March 2020 until its conclusion.
16. I now deal with the matter of the alleged defamation suit instituted by the Plaintiff against the Defendant.
17. The defamation matter was heard over a period of three days commencing on 16 March 2020 to 18 March 2020.
18. At the conclusion of the hearing of this matter, this Court instructed the parties to file heads of argument and would not hear oral argument. The Plaintiff was to file his heads of argument by no later than Monday 23 March 2020 and the Defendant to file its heads by 30 March 2020 and would then consider the matter on that basis. At no stage did I intimate to any of the parties that
there would be an opportunity to file replying heads of argument.
19. Plaintiffs action against the defendant arises out of the defendant's published statements to third parties against the Plaintiff that he alleges are defamatory per se.
20. The publication or statements complained of were allegedly made to the then "Law Society of the Northern Provinces", its staff members, the Magistrate attending to the defendant's application for a restraining order against the client of the Plaintiff, a Mr. Ralph van der Merwe, Magistrate Boase of the Violence Court Temba, the personnel employed at the Domestic Violence Court, Temba, the attorney representing the defendant in the Domestic Violence Court Temba and Advocate K Potgieter.
21. It is perhaps apposite at this juncture that I quote verbatim the statement made to the Law Society which is alleged to be defamatory which statement is also quoted verbatim in the Plaintiff's particulars of claim.

"I have applied for a protection order against his client, Mr. Ralph vd Merwe. Mr. vd Merwe was involved in activities which I had nothing to do (and I can proof it via whatsups, recorded calls and witnesses, however Mr. Coetzee blamed the entire situation on me instead of his own client who in fact did it. Further the entire email forwarded to the Beeld newspaper as well as the NSPCA contains only a lot of lies, which I can also proof (sic). There are two clients involved here which agreed to do affidavits as well that the writer of the email is accusing me falsely. I am more than happy for any investigation to be done asap and furthermore I will sue Mr. Mario Coetzee for damages due to these actions.

To investigate the matter and allegations, so the true facts can be revealed. This attorney should know of much better than just taking lies from his client and report me to both the media as well as the SPCA. In his email, Mr. Coetzee accuse me continuously of acts that were not done by me or on my premises. Worldwide I have a very good reputation and these allegations will cause extreme harm to me."

22. Plaintiff in its particulars of claim contends that the above statement is defamatory per se and conveyed that the Plaintiff in his professional capacity as the Officer of the Court:

22.1 Is dishonest;

22.2 Has mislead the Domestic Violence Court of Moretele, held at Temba;

22.3 That it carries the additional sting that:

22.3.1 that the Plaintiff is guilty of unprofessional conduct;

22.3.2 that he condones unprofessional conduct;

22.3.3 that he is prepared to conspire with his client Mr. Ralph van der Merwe to mislead the Court by presenting "untruths" to the court;

22.3.4 that he is prepared to enter upon litigation without determining the veracity of the relevant facts;

22.3.5 that he rendered himself guilty of ma/a fide conduct during the litigation process;

22.3.6 that he executes his duty as a litigation attorney in an unprofessional manner and in a manner unbecoming of an Attorney of this Court; and

22.3.7 that he in his capacity as an officer of the Court disregarded his duties to the Court and carried those duties out with disdain to the Court and the Court process.

23. Plaintiff claims in his particulars of claim that he has been damaged in his reputation and has suffered damages in the amount of R500 000.00. He however did not persist with the stated amount during the hearing of the matter and left it to the discretion of the Court to determine the amount of damages, if any.

General Principles applicable in a defamatory matter

24. Generally, the Plaintiff must set out the words alleged to have been used by the defendant and may not content himself with giving their effect and meaning as that is matter for the court. Further the plaintiff need not plead the actual words used but may allege that the words set out "or more or less those words were used".[1]
25. Where the statement is defamatory per se plaintiff may attach a particular meaning in the form of a quasi-innuendo to it and point to its sting. Once a sting is alleged, as in this matter, the plaintiff is bound to that sting and may not rely on any other.[2]
26. It is further a general rule that the plaintiff must allege and prove the wrongfulness of the statement though in this regard he is assisted by the factual presumption that the publication of a defamation statement is prima facie wrongful. The onus of rebuttal rests upon the defendant to dispel this prima facie case. The overall onus though rests on the plaintiff.[3]
27. More importantly though is that although the plaintiff must allege that the statement was defamatory, it is a question of law whether the words complained of are reasonably capable of conveying to the reasonable reader a meaning defamatory of the plaintiff.[4]
28. At the trial of the matter, Plaintiff testified on his own behalf and he did not call any other witnesses and the Defendant testified on her behalf and also called a Ms. Jeanette Erasmus, the President of the Pit Bulls Association to corroborate some of her evidence and more in particular about her reputation within the community of dog breeders.

The Evidence of the Plaintiff

29. Plaintiff testified that he is an attorney of many years' experience and has his own practice which apparently he established in 2007 and employs approximately 20 people. He regards himself as a specialist in family law.
30. At the time of the incident, he was representing one Mr. Ralph van der Merwe whom he had met at a social event around January/February 2018.
31. Van der Merwe told him that he was not satisfied with his current attorneys on a certain matter involving the Defendant and Plaintiff invited him to phone his office.
32. During the consultation they had, van der Merwe explained to him that he was involved in various litigation matters with the Defendant Ms. Janse Van Rensburg.
33. Defendant was an applicant in a domestic violence court which application was opposed. A counter application was lodged by his client against the Defendant for the return of certain movable goods which it was alleged the defendant had refused to give back to the said van der Merwe.
34. Much of what was said in this regard was in my view irrelevant for the purposes of this Court but for certain allegations made in affidavits filed in the proceedings before the Domestic Violence Court of Moretele, Temba which I will come to.

35. Plaintiff further testified that on 06 April 2018, Defendant filed a complaint against him or his firm with the then Law Society of the Northern Provinces but he has not been found guilty. I must add here that it was clear to this court that the Law Society had not dealt with this issue as at the time when this matter was heard.
36. He further referred to an affidavit deposed by the Defendant at the proceedings in the Domestic Violence matter in Moretele and in particular paragraph 14.7 thereof and states that there was no need at all to notify the Magistrate that Plaintiff is unethical.
37. It is perhaps also apposite that I should quote the said paragraph verbatim. Paragraph 14.7 which is contained in the Defendant's Replying Affidavit in case number 100/2018 in the Magistrate Court for the Magisterial District of Moretele held at Temba in the matter between Helena Bernadien Janse van Rensburg and Ralph van der Merwe read as follows:

"More importantly I refer the Honourable Court to my complaint lodged against Coetzee at the Law Society for his improper and unethical conduct and crusade to intimidate and influence me. A copy of the said complaint is attached hereto marked as Annexure "RA6"."
38. I think it would be prudent that I mention that the above stated paragraph 14.7 is part of the Defendant's detailed reply to paragraphs 4.9 to 4.10 of what was termed a "Further Affidavit" deposed to by Ralph van der Merwe, the client of the Plaintiff on 9 April 2018. The said further affidavit is contained in the pleadings bundle 2 commencing at p162 and sub paragraph 4.10 thereof made certain allegations against the Defendant and basically accusing her of criminality which involved alleged animal cruelty which van der Merwe claimed to have witnessed being performed in the Defendant's cold rooms and/or motor vehicle.
39. Plaintiff was cross examined extensively about the above allegations and in particular about the above stated paragraphs and he admitted to having drafted some of the affidavits on behalf of van der Merwe but was evasive in so far as the above was concerned and simply stated that he cannot remember who drafted the further affidavit referred to above as other attorneys in his office were also involved in the drafting of other affidavits.
40. Needless to state that I found the above explanation unconvincing. In my experience, no attorney should allow any document to go out under his name without him having satisfied himself that the content thereof is accurate and is happy with it.
41. He in his evidence asserted that it was not necessary for the Defendant to publish to the magistrate, the advocate and court personnel her complaint to the Law society.
42. I must state that am not persuaded in this regard by the Plaintiffs explanations and/or his interpretation of the words that he alleges are defamatory.
43. Before dealing with my reasons, I perhaps need to address the Defendant's plea and evidence led during the trial of this matter.

Defendant's plea and evidence

44. Whilst I do not intend to deal with the defendant's plea in great detail and suffice to say that she admitted having laid a complaint against the Plaintiff with the wording referred to by the Plaintiff which wording is supposed to form the basis of the Plaintiffs defamation claim.
45. She however pleaded in her defense among others that the statements were not unlawful and justified by fact that the interpretation thereof as pleaded by the Plaintiff does not bear a defamatory meaning, that such statements were true and in the public interest and made during the course of legal proceedings and relevant to the litigation which was at hand at the time and supported by reasonable grounds and as such seen in the prevailing context, constituted fair comment.
46. Defendant further pleaded that the statements were made without any animus iniurandi as the statements were relevant to the judicial proceedings and relevant to discredit the defenses of Mr. Van der Merwe, the Plaintiff's client in the proceedings which were pending in the Temba Domestic Violence Court.
47. In short one would read her defense to be that of privilege in that her statement and in particular to the allegation pertaining to her statement in her affidavit filed at the Temba Court was a privileged occasion and in response to an affidavit of van der Merwe reasonably believed to have been also drafted by the Plaintiff.
48. A privileged occasion however cannot be misused. A plaintiff in a defamation suit must show that the Defendant exceeded the bounds of privilege and acted with malice which would be "spite" or "ill-will". Any motive that does not originate from a "sense of duty or desire to protect an inte rest" would give rise to improper motive or malice.
49. In this matter, Defendant testified that the publication to the Law Society of the Northern Provinces was done with the advice of his then attorneys and intent of lodging a bona fide complaint at an institution intended for the receipt and adjudication of such complaints against attorneys practicing in the Northern Provinces and as such with no intention to defame or done with malice.
50. She testified that on 3 April 2018, she was informed of a letter written by the Plaintiff addressed to the Society for the Prevention of Cruelty to Animals, the Pit Bull Federation of South Africa and "Die Beeld" which in a nutshell accused her of committing horrific acts of cruelty to animals.
51. The letter referred is reproduced hereunder as it puts everything into proper perspective. Plaintiff wrote as follows:

"Dear Sir/Madam

I write that (sic) as a concerned officer of the Court (my emphasis).

I am an attorney whom (sic) had consulted with my client and was made aware of this the horrific incidents that are currently happening at Picasso Napoleon Mastiffs,, being owned and run by Linda Janse Van Rensburg at Plot 47, Kromdraai Crescent,

My client was involved in a romantic relationship with the owner, Linda, which relationship had been short lived and came to an end during 2017.

My client attended the premises of the breeder during December 2017 in order to remove some of his belongings and noticed that the Breeder had committed this severe offence on her puppies, which she had sold to people in Bloemfontein.

My client took photos of the terrified puppies and same was shown to me, which I attach hereto for you (sic) ease of reference.

I did advise my client to attend the nearest SAPS and to lay a complaint of Animal Cruelty.

My client reported back to me that the SAPS does not want to assist because they say that he cannot be the complainant.

I drove with my client to the SAPS Moot with the hope to be assisted and yet again they did not want to assist saying that we need to approach the SAPS Hammanskraal.

I then drove to SAPS Hammanskraal and was attended upon by Capt. Nkutshweu. I was shocked to experience that the Captain interrogated

my client for failure to report the crime and was told that they cannot do anything and refused to be of assistance.

I have nowhere else to turn to except to you and really trust that you will be able to assist.

Should you require any information, you are more than welcome to contact me directly. (my emphasis).

Sincerely

Mario Coetzee".

52. It is common cause between the parties that on the very same day, Defendant was made aware of the above letter and she approached her then attorneys Van Greunen to address a letter to the above three recipients of the Plaintiff's letter denying the allegations levelled against her. The Plaintiff was also copied on her response.
53. What is of interest is Plaintiff's response to the letter of the Defendant Attorneys which contradicts Plaintiff's assertion that he was acting on instructions of his client.
54. The above letter, states that he writes the letter as a concerned officer of the court and not on the instructions of his client or acting on behalf of his client. Normally attorneys would state in any correspondence that they act on behalf of their client but in this case, Plaintiff chose to write as a concerned officer of the court.

55. In his response to Van Greunen and Associates Inc. letter, he again in no uncertain terms the following:

"I , with respect advise you and your client that my complaint (my emphasis) was not addressed to you or your client and my intention behind sending such correspondence was to serve as a complaint in the hope/anticipation that an investigation will follow to come to the true fact behind it all (my emphasis)."

56. Based on the above, I have no reason to doubt Defendant that she bona fide intended to lay a complaint against the Plaintiff about what was clearly of major concern to her, her reputation and her business and I accept that she had every right to protect her interests. As a matter of fact, Plaintiff himself admitted during his evidence that Defendant is entitled to lay a complaint to the Law Society and what that suggests to me is that he probably has a problem with the words used and quoted above at paragraph 21 above.

57. Having read the said words and referred to above at paragraph 21 and understood the context in which they were published, I cannot find anything defamatory.

58. More so it is very clear that Plaintiff directed the above correspondence to all the recipients thereof in his personal capacity and not acting on the instructions of his client as he alleged in his evidence before this Court. My conclusion in this regard is further bolstered in his email when he states the following:

"I have nowhere else to turn to except to you and really trust that you will be able to assist."

59. He does not say that his client has nowhere else to turn to but states categorically that he has nowhere to turn to and I am of the view that any person reading the said correspondence would understand him to be the complainant and not his client and even content and context of it suggests the same.

60. The evidence of the Defendant during the hearing of this matter clearly showed that she suffered great prejudice and harm as a result of the Plaintiff's utterances in his correspondence particularly the email referred to above.

61. She faced criminal charges which appear to have been cleared trumped up and fortunately for her justice was done and she was found not guilty and discharged.

62. Based on the fact that the Defendant was found not guilty and discharged, one would have thought that some sanity would have prevailed and Plaintiff would have reconsidered his position in so far as this matter is concerned but it would appear that it did not. Instead Plaintiff has persisted with his claim against the Defendant causing her further anguish.

63. I am therefore in agreement with Defendant's counsel's submissions that this is a matter which the Plaintiff after all has been said and done and in particular when Defendant was acquitted of the crimes she was alleged to have committed which prompted the Plaintiff to pen the email of the 3rd of April 2018 should have seriously reflected thereon and withdrew this matter and apologized to the defendant for all the anguish his action caused her.
64. Further, I must express my dissatisfaction with the manner in which Plaintiff conducted himself in so far as this matter is concerned.
65. Firstly this Court was astounded by the volume of the plaintiff's summons which ran to more than 400 pages when in fact the particulars of claim were a mere 7 papers and defendant's plea was only 5 pages.
66. The Court file was burdened with a whole lot of irrelevant documents which added very little to the proceedings. One is left wondering what was the purpose of all the documents that were filed which were hardly referred to.
67. More astounding was the Plaintiff's assertion in Court that he was not provided with a copy of the summons and somehow sought to put the blame at the door of the Defendant's attorneys. He was the dominus litis in this matter and it was his duty to prepare and paginate the Court file which this court was advised he did not do when he in fact is the party who set the matter down for trial.
68. Having said all the above, it is this finding that Plaintiff's claim is without merit and ought to be dismissed.
69. With regard to costs, this court intends to show again its disapproval of the Plaintiff's manner in which he conducted himself by ordering him to pay the costs of the Defendant on an attorney and client basis.
70. Accordingly, the following order is made:-
1. The Plaintiff's claim is dismissed;
 2. The Plaintiff is ordered to pay the Defendant's costs on an attorney and own client scale.

M Kumalo

Acting Judge of the High Court

Heard on: 16 - 18 April 2020

Date of Judgment: 19 August 2020

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- [1] See International Tobacco Co. of SA Ltd v Wollheim 1953 (2) SA 603 (A) 613-614
- [2] Marias v Steyn 1975 (3) SA 479 (T) 586, Demmers v Wyllie 1978 (4) SA 619 (D) 622
- [3] Joubert v Venter 1985 (1) SA 556 (A) 571, SAUK v O'Malley 1977 (3) SA 394 (A)
- [4] SA Associated Newspapers Ltd v Schoeman 1962 (2) SA 613 (A) 616, Johnson v Beckett 1992 {1} SA 762 (A).

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Prepared on 12 October 2026 · Esheria