

SOUTH AFRICA / JUDGMENT

Wolmarans v Motsi (78/2009) [2011] ZANWHC 93 (7 July 2011)

[2011] ZANWHC 93

COURT

North West High Court, Mafikeng

BEFORE

N Gutta

CASE / FILE NUMBER

78/2009

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NORTH

WEST HIGH COURT, MAFIKENG

CASE

NO. 78/2009

In

the matter between:

MATTHEWS

JOHANNES WOLMARANS

.....PLAINTIFF

and

ALFRED

MOTSI

.....DEFENDANT

JUDGMENT

GUTTA J.

INTRODUCTION

- [1] On 19 January 2009, the plaintiff issued summons against the defendant for damages in the amount of R1 000 000.00 for defamation arising from a broadcast on Radio Motsweding.
- [2] Summons was served on 09 February 2009 at 2415 Magoleng Street, Lethabong Village, Hartebeesfontein.

- [3] On 09 March 2009, the defendant entered an appearance to defend. The defendant was represented by the attorney, S M Mookeletsi Attorneys.
- [4] The defendant failed to file his plea and on 16 April 2009, the plaintiff served a notice of bar on the defendant's attorney.
- [5] On 25 August 2009, the defendant's attorney withdrew as attorneys of record. In their notice of withdrawal, they gave the defendant's last known address as:

c/o J Mahommed Attorneys

P O Box 2991

Johannesburg

2000.

- [6] The plaintiff applied for a date for the hearing, and the Registrar of this Court allocated 20 June 2011.

- [7] The plaintiff duly set the matter down for default judgment on 20 June 2011. The notice of set down was served by the sheriff at the defendant's residential address at Lethabong Village, Hartbeesfontein on 20 April 2011, on one Mr Adam Molaze, a

co-occupier of the house. The notice of set down was also served by registered post on the defendant's firm of instructing

attorneys in Johannesburg, namely, Mohammed Attorneys.

- [8] On the day of the hearing, the defendant was in default.

SERVICE

- [9] I was of the view that there was proper service on the defendant in terms of the Rules of Court and proceeded to hear evidence on the merits and the quantum of damages.

MERITS

- [10] The plaintiff testified that on 16 December 2008, the defendant stated on air, on Radio Motswedding, words to the effect that the plaintiff in his capacity as Executive Mayor of Rustenburg Local Municipality is involved in irregularities with tenders being awarded by the Rustenburg Local Municipality Council.
- [11] The defendant was being interviewed by a radio presenter, who posed the question why the defendant had been removed from his position in the Mayoral Committee.
- [12] Counsel for the plaintiff, Adv Swart, handed in a transcript of the broadcast. In the defendant's reply, he stated, inter alia, that:

“... the main problem that happened was that we were against the corruption that happened in our municipality of Rustenburg. It is not the first time it happened. Most of the times Mayor Matthews Wolmarans like to control the tenders for himself, that's the main reason why we are fighting so hard – we were against that.”

[13] Mr Swart submitted that the aforesaid statement was per se defamatory of the plaintiff and was wrongful. He submitted that the statement was made by the defendant with the intention to defame the plaintiff and injure his reputation and fame.

[14] Mr Swart further submitted that the statement was understood by the addressees and was intended by the defendant to mean that the plaintiff is dishonest and is involved in corruption with the awarding of tenders by the Rustenburg Local Municipality.

[15] The onus is on the plaintiff to prove publication of a defamatory statement.

[16] In deciding whether the above statement is defamatory, I must consider how the statement was understood in its context by an

ordinary reader and whether it lowered the esteem of the plaintiff in the estimation of the ordinary reader. This is a question of law. See *Mohamed & Another v Jassiem* [1995] ZASCA 115; 1996

(1) SA 673 (A) at 706H–J; also see *Sindani v Van der Merwe* 2002

(2) SA 32 (SCA).

[17] The plaintiff, as the mayor was in a senior position and entrusted with the responsibilities that such a position entails. To suggest that he was awarding tenders to himself would, in my view, lower him in the estimation of people in his work environment and in society in general and it is defamatory.

[18] I am accordingly of the view that the words complained of are reasonably capable of conveying to the reasonable reader a meaning

which defames the plaintiff, namely, that the plaintiff is untrustworthy and that he is awarding tenders irregularly.

[19] As the defendant is in default, he is unable to dispel the prima facie case and the wrongfulness is not discharged. The statement is accordingly unlawful.

[20] The plaintiff is also assisted by the presumption that the publication of a defamatory statement takes place animus iniuriandi.

[21] Accordingly, the publication of the defamatory statement is prima facie wrongful. See *National Media Ltd v Bogoshi* 1998

(4) SA 1196 (SCA).

DAMAGES

[22] The plaintiff testified that he was directly affected by the broadcast in that:

22.1. he lost respect, was not trusted and was disregarded by his colleagues and members of the Mayoral Committee. He was perceived as being a corrupt individual who cannot be trusted and viewed suspiciously;

22.2. councillors distanced themselves from him and he had to endure questions from the councillors regarding the awarding of tenders. He was viewed as someone who could not be trusted;

22.3. his seven year old son also posed questions to him regarding the broadcast;

22.4. members of the community also questioned him about the broadcast and had doubts and reservations concerning his ability as Mayor;

22.5. his Reverend in the church also questioned him;

22.6. he lost confidence and trust of people and it tainted his relationship with people generally;

[23] Although the plaintiff originally claimed damages in the amount of R1 000 000.00, Mr Swart submitted that the Court should award the plaintiff damages in the amount of between R100 000.00 and R120 000.00. He referred the Court to the Supreme Court of Appeal's (the SCA") decision in *Tsedu & Others v Lekota & Another* 2009

(4) SA 372 (SCA).

[24] In the above case, the respondents, who were prominent office bearers in the African National Congress, claimed damages for defamation arising from a publication in a newspaper wherein the article reported that the respondents had "spied on the ANC and our comrades— . . . supplying confidential ANC information to the apartheid – era National Intelligence Services . . .". The SCA awarded the respondent damages in the amount of R100 000.00.

[25] Factors considered by the Court when determining quantum are:

25.1 the seriousness of the defamation;

25.2 the nature and extent of the publication;

25.3 character and conduct of the plaintiff;

25.4 motive and conduct of the defendant;

25.5 any other circumstances relevant to the matter in question.

See *Mogale & Others v Seima* 2008

(5) SA 637 (SCA); also see *Hobe v Tip Loader Services & Another*

[2009] JOL 22994 (Tk).

[26] In the Mogale & Others v Seima case supra, the editor and publisher of the Sowetan newspaper published an article stating that the plaintiff, who is an advocate, gave his wife a 'hot klap' on the face after a wedding reception, the SCA set aside the Court a quo damages awarded and replaced it with R12 000.00.

[27] In Young v Shark [2003] JOL 12113 (C), the plaintiff claimed damages for defamatory statements made by the defendant in an interview which was broadcasted on the television station, e.tv. The Court awarded the plaintiff damages in the amount of R150 000.00.

[28] In Dikoko v Mokhatla 2007

(1) BCLR 1 (CC), the plaintiff, the Executive Mayor, instituted an action for defamation against the Chief Executive Officer of the municipality

arising out of a statement the defendant made to the Provincial Public Accounts Standing Committee that he failed to pay the excess

of a cell phone account. The High Court awarded the plaintiff an amount of R110 000.00. The SCA dismissed an application for

leave to appeal and the plaintiff applied to the Constitutional Court for leave to appeal, and the Constitutional Court granted leave but ultimately dismissed the appeal with costs.

[29] In Mkhize v Media 24 Ltd [2008] 4 All SA 267 (N), the plaintiff claimed damages for defamation arising out of an article published that the plaintiff had been involved in an assassination of a political figure. The court took into account the fact that the plaintiff was a well-known political leader with an impeccable reputation, that the publication was a fairly wide one and that there was an obdurate refusal by the defendant to acknowledge the fact that it had defamed the plaintiff and to apologise. The Court awarded damages in the amount of R150 000.00.

[30] The following factors are relevant, namely, that:

30.1. the plaintiff held a senior position as Executive Mayor of the Rustenburg Local Municipality;

30.2. the statement is serious in that it challenges the plaintiff's conduct as a mayor and suggests that he is dishonest and untrustworthy and not worthy to hold the position as mayor;

30.3 the statement was aired on Radio Motswedding;

30.4. his reputation was tainted, not only at work but also in the community.

[31] I am of the view, taking these factors into consideration, as well as the award of damages in cases cited supra, that an appropriate award for damages is the amount of R80 000.00.

ORDER

[32] I make the following order:

- a) The defendant is ordered to pay the plaintiff the amount of R80 000.00; and
- b) The defendant is ordered to pay the costs of the action.

N. GUTTA

JUDGE OF THE HIGH COURT

APPEARANCES

DATE OF HEARING : 20 JUNE 2011

DATE OF JUDGMENT : 07 JULY 2011

COUNSEL FOR PLAINTIFF : ADV A.J. SWART

ATTORNEYS FOR PLAINTIFF : MINCHIN & KELLY INC.

(Instructed by DU PLESSIS & VAN DER WESTHUIZEN INC.)

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