

IN THE HIGH COURT OF SWAZILAND

HELD AT MBABANE

CIVIL CASE NO.641/89

In the matter between:

SAMUEL T. MAGAGULA

Plaintiff

and

BHEKIWE VUMILE HLOPHE

1st Defendant

LYNETTE SIBONGILE MASUKU

2nd Defendant

LADY HOWARD

3rd Defendant

NICHOLAS DLAMINI

4th Defendant

ALFRED AFRICA MKOKO

5th Defendant

C O R A M : DUNN J.
FOR THE PLAINTIFF : MR J.G. VILAKAZI
FOR THE DEFENDANTS : MISS K.P. SIKHONDZE

JUDGMENT

18th June 1993

The plaintiff, a highly qualified and experienced teacher, was until September 1989, the headmaster of Mpaka High School. The defendants were teachers at the school. At the beginning of 1989 the plaintiff, as headmaster, made a recommendation to the Teaching Service Commission (TSC) for the transfer of the defendants from Mpaka High School. There is some dispute as to whether the plaintiff followed the right channels in submitting his recommendation. It is not in dispute, however, that the recommendation was received by the TSC and that it was subsequently communicated to the defendants. In response to the recommendation the defendants prepared and signed a joint memorandum which was sent to the TSC. The memorandum was dated 13th March 1989 and was headed "Protest of transfers from Mpaka High School." The memorandum reads -

/We would...

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We would like to oppose the above recommendation which was initiated by the Headmaster--Mr S.T.M. Magagula. On the 12th April, the headmaster summoned us to the office and told us about the recommendation, stating that he had done so because of a breakdown of the working relationship between the administration and us. On the 13th April we wrote individual letters to him, requesting reasons pertaining to the breakdown of the relationship, as suggested by him. This was in an attempt to mend this breakdown while avoiding dialogue and conflict. The reasons behind this act were that some of us had not been forewarned of this breakdown, and almost all of us had not received the three warning letters.

To our surprise we were yet again summoned to the office on the 18th April, to be informed that he was not going to respond to our letters requesting reasons for such a breakdown and finally the recommendation. He told us that the only body that could give us the reasons we requested was the Ministry. He said that because he had informed us of the recommendation, he was going to offer us no audience at all.

We feel Mr Magagula initiated our transfers because we had criticized his way of administering the school and his corruptness.

A. School Administration

1. Discipline: Many times he has been requested in staff meetings to outline measures of discipline expected and accepted in the school.

/He has...

He has totally failed to do this hence a colossal disciplinary problem exists in the school. Some examples are:

a) a certain student was discovered with a radio on full blast during a study period. Most students were found outside this class because of the impossibility of studying in such a class. A teacher on duty, who happens to be on this list of transferees, confiscated the radio, as a measure of discipline to the student. Two days later the teacher was summoned to the office and the radio demanded back. The Headmaster claimed he was going to give proper punishment to the student. The student was never punished to this date.

b) a student defied a teacher's directive. The teacher called her five times and she insolently defied these orders in front of a class of students (on one occasion). When called by the administration she twice blankly refused to see them and the third time refused to take the teacher's punishment as directed by the office. The office accepted her reasons for refusal of punishment. This giant disciplinary problem has been created and accelerated by the fact that he makes himself a laughing stock to the students as he attempts and has affairs with students. When disciplinary measures are taken these students can blackmail him. We quote

"He is refusing me permission because I refused to sleep with him." (Jan. 1989)
This makes it impossible for teachers to punish those students and they verbally demand to be punished by him.

2. Administration: This school has too many 'administrators', this including two of the Headmaster's sons. They and the headmaster -

i) have access to the bursar's and headmaster's office during weekends or holidays such that there results in misplacement and subsequent loss of documents and money in the bursar's office.

ii) are more informed than most of the staff on matters pertaining to the school.

iii) are given the privilege of fiddling with the school trucks.

iv) refuse punishment with the Headmaster's backing. In March, these students were among six other students who were punished by slashing grass in the school compound, at the recommendation of the administration. The teacher who issued the punishment was summoned to the office and directed by the Headmaster to relieve all students from the punishment with immediate effect. This was all to relieve these two 'administrators' from the punishment and generally they refuse punishment preferring to be punished by the Headmaster knowing very well they will get away with it.

3. Communication: We are being dictated to and we had strongly criticized this.

i) Students are the first to know of issues pertaining to the school.

ii) R4000 went missing through a burglary during the December/January holidays. Fingers were pointed at a number of teachers, but the headmaster still refused to inform us officially of the issue, to date.

iii) Students are admitted into completing classes despite our protests at staff meetings. He claims these are admitted because of their sporting activities yet he had flatly refused to accept our own repeating Form III students, claiming they must upgrade.

iv) He had promised teachers in a number of staff meetings to make students adhere to school rules and regulations, e.g. uniform and personal grooming, the English language, and latecoming. This he has failed to do because "Kuzawudingwa siqaphele ukuthi sikhuluma nobani." This he said wholeheartedly knowing very well that the majority that was going to suffer was the permed group which consisted mainly of the she group. Amongst this group was the student who was heard to say "He is refusing me permission because I refused to sleep with him."

B. CORRUPTION

a. Personal Relationships with Students:

i) He has affairs with students. One particular case is that of a girl who wrote O-levels last year who is now his live-in girlfriend and he openly discusses this with members of staff.

ii) he abuses the school vans (SG020ED, SD631SM and SD432NM) for his own interests.

a. he drove a student (Jan. 1989) to Luvu in an attempt to seduce her. He didn't succeed.

b. on the 26th Nov 1988, he drove boarding students (girls) in SG020ED to Siteki to buy liquor and meat to entertain themselves, without the boarding master's permission. Amongst these girls was the present live-in ex-student. As a result, the Boarding master cannot define boundaries to students since they are -

i) said to be called by the headmaster by sending the two administrators living with him.

ii) visiting their friend (the ex-student) at the Headmaster's house, at the Headmaster's invitation.

c. the recently donated van (SD631SM) was presented by the Canadian representative on the 8th April with a big dent that was powder pacted. The headmaster was responsible for this.

d. When the vans were needed for urgent use by the school in the late evening, he was nowhere with one of the vans. He would either be seen in Mhlume or carrying logs to Luvu, so that the vehicles were not available in case of illness or other emergencies.

e. On the 20th April he drove off late

/in the...

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in the afternoon in SD631SM with the live-in ex-student and his family until late in the evening.

He is very much aware that we stand as a threat because of our open criticism of his policy of corruption and his lack of administration. In the above issue he has displayed these two aspects by attempted assault of one of the transferees--Nicholas Dlamini TSC No.10364 on the 18th of April. This therefore proves that he feels we are a great threat to his policy.

DEPUTY HEADMASTER

A. Broken promises. Too many broken promises which has led to lack of discipline, poor attendance of students in class and hence poor education.

1. Lack of discipline: he doesn't stand by his word. He discusses with a teacher the right disciplinary channels but when he meets with the Headmaster they discuss the wrong channels of discipline which favour the student resulting in lack of discipline of the students. One incident was when students were punished by cutting grass after school. He admitted that it was a fair punishment, but when he met the headmaster, the teacher was directed to drop the punishment with immediate effect, with him strongly supporting the Headmaster. This results in defiance by students.

2. Diplomacy: he is not diplomatic in communicating with teachers. He treats teachers as his peers. He refers to teachers' business as nonsense, which is a word we, the transferees, had strongly criticised.

3. Poor attendance of students in class: His policy of administration has led to poor attendance of students to class, in that he, in collaboration with the headmaster, issues pass out slips to students, throughout the day, for very trivial reasons, regardless of classes going on. The students have begun to mock the administration, whereas the parents and the community as a whole mock the school about the abundance of female students at the Railway compound during school hours.

Therefore the person who should be transferred under the above conditions is none other than the Headmaster.

The plaintiff alleges in this action that paragraphs A and B under the headings "School Administration" and "Corruption" are defamatory per se of and concerning the plaintiff. It is alleged that the publication of the memorandum was malicious and was intended and understood to mean -

1. that the plaintiff is an immoral person who seduces and maintains close relationships with school girls for purposes of having sexual intercourse with them;
2. that the plaintiff is a dishonourable and untrustworthy person in that he misuses school property for his own personal benefit;

3. that the plaintiff by virtue of his immoral disposition was incompetent in his work and was unworthy of being headteacher of Mpaka High School and was bringing the said school into discredit.

The plaintiff alleges that as a result of the publication he has been injured in his good name and reputation as well as in his position as the headteacher of Mpaka High School and has suffered damages in the sum of E50,000.00. He claims the said amount against the defendants jointly and severally.

The defendants who are represented by the office of the Attorney-General admit the publication of the memorandum but deny that they acted maliciously. The defendants deny that the memorandum is defamatory "as it was published on a privileged occasion in that they had a common legitimate interest and duty to object to the concerned authorities regarding their transfer". The defendants plead in the alternative that -

"they were justified to publish the said letter in as much as its contents were true in substance and in fact since such contents mainly related to:

- (i) the prevailing standard of administration at the school;
- (ii) the quality of working relations and morale among members of staff; and
- (iii) the quality of the then prevailing teacher and student relationship and the level of student discipline."

It is lawful to publish a defamatory statement in the

/discharge...

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discharge of a duty or the exercise of a right to a person who has a corresponding right or duty to receive the information. Even if a right or duty to publish material and a corresponding right to receive it does not exist, it is sufficient if the publisher had a legitimate interest in publishing the material and the publishee had a legitimate interest in receiving the material. See Burchell, *THE LAW OF DEFAMATION IN SOUTH AFRICA* p 244 and the authorities there referred to. The duty or right to communicate defamatory matter may be legal, moral or social. *DE WAAL v. ZIERVOGEL* 1938 AD 112. In deciding whether a social or moral duty existed so as to make privileged an occasion upon which a defamatory statement has been published the test is whether the ordinary reasonable man would consider such a duty existed. *De WAAL v. ZIERVOGEL supra*. The protection afforded on certain occasions by the defence of qualified privilege can be forfeited if the defendant is actuated by an improper motive or as it is sometime said, "malice". Burchell, *supra* p 258.

In order to establish the defence raised in the present case, the onus is on the defendants to establish that -

- (a) the defendants had an interest in making the communication to the TSC;
- (b) the TSC had an interest in receiving the communication;
- (c) the communication was relevant to the matter under discussion.

The TSC is a statutory body set up by Section 9 of the Teaching Service Act No.1 of 1982. The TSC is responsible, inter alia, for the appointment, transfer and discipline of teachers.

The argument advanced on behalf of the plaintiff is that the defendants were actuated by an improper motive and that the matters they complained of were not relevant to the question of transfer which was the subject of the plaintiff's recommendation to the TSC.

The plaintiff gave evidence setting out the reasons on which his recommendation to the TSC was based. He explained that the defendants failed to obey instructions which he had given and to abide by regulations which the defendants had agreed to at the beginning of 1989. The plaintiff denied the allegations made against him in the memorandum. He told the court that he had fallen in love with a girl who had completed high school in 1988. He fell in love with her in February 1989 and married her in 1991.

The evidence led on behalf of the defendants is that the memorandum sought to bring to the attention of the TSC the real reason for the plaintiff's recommendation namely, that the defendants actively challenged the plaintiff's conduct in the management of the school. The plaintiff, it was argued, viewed the defendants as a threat to his leadership and hence the recommendation without first calling upon the defendants to mend their ways. The defendants deny any improper motive and maintain that the communication was made solely for purposes of placing the full story before the TSC whose duty it was to take a decision on the plaintiff's recommendation.


There can be no doubt in my view that the TSC had an interest in and the right to receive the memorandum from the defendants. The plaintiff concedes that that is the position. The plaintiff's contention is that the defendants were actuated by an improper motive. It is submitted that paragraphs A and B of the memorandum complained of are not

/relevant...

relevant to the question of the transfer of the defendants. It is essential, in my view, that the memorandum be read as a whole. Paragraphs A and B were set out as the real reason for the plaintiff's recommendation. The paragraphs set out the basis for the criticism which the defendants allege they levelled at the plaintiff. The defendants sought by paragraphs A and B to substantiate the allegation that the plaintiff's recommendation was actuated by the criticism that the plaintiff faced. The defendants' memorandum, it must be borne in mind, was in response to an allegation by the plaintiff that the defendants were in breach of administrative regulations in force at the school. The memorandum served to deny this allegation and placed before the TSC what they considered was the real reason behind the plaintiff's recommendation. It is interesting to note that a commission of enquiry was set up by the TSC following the defendants' memorandum. This emerged in the course of the plaintiff's evidence. The findings of the commission were not communicated to the parties. The establishment of the commission was indicative of the TSC interest in the contents of the memorandum under its overall responsibility for the teaching profession.

The plaintiff has not established, in my view, that the defendants were actuated by an improper motive in publishing the memorandum. The defendants had a legitimate interest in the issue which the memorandum sought to address namely, the question of their transfer. The communication was made bona fide to the TSC which as stated had the power to investigate and make a decision on the plaintiff's recommendation. The relevance of the communication to the question of the transfer is not in any doubt.

The action is dismissed with costs.


B. DUNN
JUDGE