IN THE HIGH COURT OF SWAZILAND Civ. Case No. 882/94 In the matter between: CLEMENT MNGOMEZULU Plaintiff vs HERMAN SAMBO GULE Defendent CORAM: S.W. SAPIRE A.C.J. FOR THE PLAINTIFF Mr. J. Magagula FOR THE DEFENDENT Mr A Lukhele JUDGMENT

(26/8/96)

The Plaintiff in this matter is Clement Mngomezulu. He is described In the summons as a Police Officer. The evidence discloses that he is not a Police Officer but an Inspector in the Department of Transport. Although much was made of this Defence it does not seem to me that the difference is material. The Plaintiff claims damages for defamation arising from an incident which took place on the 8th of April, 1994. The parties gave differing accounts of what took place on that day.

The Plaintiff's evidence , and in this he is supported by one Mavuso, both of whom I find to be convincing witnesses, is that an inspection point had been set up at the intersection of the Mbabane/Oshoek road where it is met by the road from Pigg's Peak.

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Here traffic was being examined for various types of transgressions and there were representatives numbering seven in all of various Departments taking part in the spot check on vehicles passing through the intersection. The evidence from Plaintiff was that one of the defendant vehicles was stopped for inspection. While the vehicle was still stationery the Defendant came on to the scene. He became incensed it appears probably because the schedule of the bus was disturbed by the inspection and he directed his wrath at the Plaintiff alleging that the Plaintiff was in the pay of a rival bus owner. According to the Plaintiff and his witnesses the Defendant became grossly abusive and persistently repeated his allegations the effect of which is set out in the particulars of claim. The defendant's conduct took place in front of and within the earshot of a number of people who were gathered at the site.

The Respondent's evidence and that of his witness was to a different effect. They maintained that what happened was that Mavuso had issued a ticket to the bus driver in the employ of the Respondent for being late and not adhering to his schedule. The Defendant's case is that he was able to convince Mavuso that the ticket had been wrongly issued, and that with the consent of the Plaintiff the ticket was torn up. Mavuso and the Plaintiff denied this version when it was put to them.

The Defendant's case was that what then happened was that the ill-feeling between the Plaintiff and the Defendant was generated when the Defendant accused the Plaintiff of not understanding his own

time schedule. The Defendant denies that he ever used the words which were alleged to have been said by him and he denies that he defamed or assaulted the Plaintiff in anyway.

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The Defendant and his witness were not altogether consistent in the evidence they gave and there are significant discrepancies particularly as to the Defendant's movements on the morning of the event. The Defendant maintains that on that morning he saw the Plaintiff in Mbabane before the Plaintiff and his colleagues went out to the inspection point. The Defendant maintains that the Plaintiff was at the offices of the Department and there tried to solicit a bribe from the Defendant In this he is contradicted by his witness who testifies that both he and the Defendant were elsewhere at the relevant time.

There is an implied suggestion that this present action is somehow connected with that other incident which is supposed to have taken place in the Department offices in Mbabane.

I accept the Plaintiff's version not only because the evidence of the Plaintiff and his witnesses was more cogent than that of the Defendant and his witness but also because the Plaintiff account is inherrently more probable.

An important issue in the case was whether Mavuso had given a ticket to the Defendant's bus driver.

This mistaken issue of a ticket is said by the Defendant to be the cause of the spill-over of ill feeling on that day. Mavuso who seemed to be an independent witness denied that he had issued the ticket.

The Defendant did not call the bus driver to whom the ticket was supposedly issued and no evidence has been led of any record of a ticket having been issued.

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One would have expected that the defendant in presenting his case would have called the bus driver or at least subpoened the records of the tickets issued at the relevant time. That he has not done so justifies an inference that such evidence would not have advanced the Defendant's case.

I find as a fact that the Defendant did defame the Plaintiff in the presence of a number of people including passengers in the buses which had been stopped at the inspection site and the Plaintiff's colleagues at the inspection point. The defamation lies in the use of words spoken loudly and publicly as alleged in the summons.

The seriousness of the defamation has been demonstrated and is certainly grossly demeaning for an inspector whether he is a Policeman or not to be accused publicly of taking bribes and being in the pay of one of the bus operators.

There has been no attempt at an apology. It is not suggested that the words were uttered in anger although it seems that they were. There is no question but that the intention of the Defendant was to injure the Applicant in his reputation publicly.

The Defendant's behaviour is aggravated by the baseless suggestion gratuitously made that the Plaintiff had acted improperly that very morning in demanding money from the Defendant. This imputation of dishonesty is closely related to the defamatory words used by the Defendant of the Plaintiff.

The Plaintiff's claim for E20 000 exceeds any amount which has either to be awarded in comparable cases. Defendant's malice, his unrepentant and uncompromising attitude justify a substantial award for what after all is a serious defamation of the Plaintiff loudly spoken before a group of concerned spectators.

There will accordingly be judgment in favour of the Plaintiff for E10 000 and costs.

S.W. SAPIRE

ACTING CHIEF JUSTICE