

IN THE HIGH COURT OF SWAZILAND

Danwell Nxumalo

V

Magudu Khoza

Case No 1657/97

CORAM

S.W. SAPIRE CJ

FOR PLAINTIFF FOR DEFENDANT

Judgment

(04/06/99)

The Plaintiff and the Defendant have respectively claimed and counter claimed against each other.

Plaintiffs claim is for damages to compensate him for injury suffered as a result of an assault on him by the defendant. His claim is for E15 000, The assault was not of an aggravated nature. Defendant admits the assault, but pleads provocation

Defendant's counter claim is for E40 000, also for damages but this time to compensate for injury which the defendant claims to have suffered as a result of insulting words said of him by the plaintiff.

There was a fracas at the school where plaintiff was a teacher, and where Defendant's son is a pupil. The defendant alleges that the cause of the fracas was an assault by the plaintiff on Defendant's son. Defendant understandably incenced by this incident went to the school where he belaboured the plaintiff with his fists.. Whatever the provocation, the assault was uncalled for and cannot be justified. Plaintiff did not suffer any serious injury. Damages in the circumstances can only be nominal. So vague is the evidence in this regard that I have decided that absolution from the instance is appropriate.

The counterclaim too, is without any substance. The words complained of, were spoken in Siswati and alleged to mean that "he (the Plaintiff) does not discuss waste matter excreted from the bowels". In popular if vulgar terms this means he does not discuss shit. I do not approve of the

proliferation of vulgar speech, but I must recognize that it is a common feature of modern society at all levels. The words complained of are mild compared to what one regularly hears on the streets on the television, and at the cinema. All it meant in the circumstances was that the plaintiff regarded the defendant's complaint as nonsense. This of course only increased Defendant's anger. The words are really not even abusive of the Defendant. Absolution from the instance is granted on the counterclaim.

This is not a matter which should have been aired in the courts and I do not propose to make any order as to costs

S W Sapire CJ