

I pointed out to Ms. Da Silva right from the onset that it was not in the interest of justice that matters be left in abeyance for such an unreasonable length of time.

Now defamation matters are print complex in their nature as compared to other civil litigation statement can be justified if such a statement was uttered of the plaintiff by the defendant(s) under certain circumstances. The plaintiff bears the onus to prove that the statement was defamatory of the plaintiff either in a direct manner or indirectly. Once plaintiff has on prima facie basis proved that what the defendant said about and concerning him was prima facie defamatory; then defendant may raise certain defences. The test for determining reference to the plaintiff is an objective one. Once the plaintiff has moved that the statement is prima facie defamatory then it is opened to defendant(s) to raise recognised defences. However in view of certain serious omissions on the part of plaintiff in these proceedings.

On pages 16 - 18 the defendants requested plaintiff to further furnish particulars. These are in my view very legitimate request for further particulars. For some reasons the further particulars were never furnished in the ordinary authorodoxed manner, certain notations were made in between the spaces of the paragraphs requesting further particulars.

I am left in complete darkness whether the requested further particulars were infact furnished. If what appears written in between the paragraphs were intended as the requested further particulars then I am afraid even though no objection was raised by counsel for the defendants nor any application made to counsel furnishing thereof what appear as further particulars is completely insufficient for purposes of

these proceedings. (See THOMPSON VS BARCLAYS BANK DCO 1965(1) SA 365 (W) @369. Some of the requests for further particulars are pertinent to pleadings e.g. "On what basis is it alleged that the said statement was false, malicious, wrongful and defamatory concerning the plaintiff. Clearly the handwritten answer does not furnish the particulars requested.

One of the requirements resting on the plaintiff is that it must make a prima facie case that the statement is in fact defamatory. When plaintiff gave evidence his evidence does not support the statement in the pleadings nor indeed in the Times of Swaziland. Assuming there was such a statement as alleged by plaintiff in his pleadings then such a statement would have been far from being defamatory.

M/s. Da Silva in her heads of argument analysed defamation and referred the court to numerous decided cases which cases are very relevant in defamation matters with the exception of PAKENDORF VS DEFAMINGH 1982(3) SA 146 A. Pakendorf's case has since been to a greater extent qualified by NATIONAL MEDIA LTD SA 1196 SCA @ 1210. Bogoshi's case disposes the notion of strict liability imposed on the print media. In other words, strict liability cannot be applied exclusively and fail to take account the freedom of expression. In defamation cases, it is always advisable for plaintiff to testify why he claims the amount he is claiming. To merely state that "I look forward to be a millionaire" does not advance his case at all.

Having considered the evidence carefully, I am of the view that plaintiff has failed to prove his case on a balance of probability. It follows that the case is hereby dismissed with costs. In terms of Rule 68(2) the costs will include those of counsel.

J. M. MATSEBULA
JUDGE