

IN THE HIGH COURT OF SWAZILAND

CASE NO. 1471/97

WALTER BENNETT

PLAINTIFF

and

ARNOT PUBLISHING CO (PTY) LTD

1st DEFENDANT

AFRICAN ECHO (PTY) LTD

2nd DEFENDANT

CORAM: Q.M. MABUZA -AJ

FOR PLAINTIFF: : ADV. KADES INSTRUCTED BY MABUZA
ATTORNEYS

FOR DEFENDANTS: ADV. M. VAN DER WALT INSTRUCTED BY CURRIE
SIBANDZE ATTORNEYS

JUDGMENT 27/7/06

[1] The Plaintiff herein issued summons against the Defendants for damages in the amount of E1.5 Million arising from the publication of a series of allegedly defamatory articles published in the Times of Swaziland and the Times of Swaziland Sunday.

The Parties hereto have agreed that the Court should decide the issue of liability and that quantum of damages will depend on the

outcome herein.

[2] The Parties further agreed that as there was no factual dispute they would not lead any oral evidence but would proceed on the papers filed with certain amendments.

[3] The first Defendant is the printer and the second Defendant is the publisher and distributor of both newspapers.

[4] The background to the matter is that during early 1997 the Plaintiff purchased a 1994 Volvo 850 GLT automatic from the Central Bank of Swaziland by sealed tender. Calls for sealed tenders had been published in the local newspapers by the Central Bank of Swaziland and apparently the Plaintiff responded and put in a tender for the said motor vehicle.

The Volvo was used by the former Insurance Registrar, a Mr. Frans Reynecke while he resided in Swaziland and it was owned by the Central Bank of Swaziland.

[5] The defendants published a series of articles concerning the sale of the Volvo wherein they alleged that the true value of the motor vehicle was the amount of E125,000.00 and that the Plaintiff had purchased it for a mere E60,000.00. In the articles it was also alleged that Mr. Reynecke had also made a bid for the motor vehicle in the amount of E85,000.00 but that this bid was not successful.

The articles intimated that there was something wrong with this sale.

[6] The Plaintiff in his particulars of claim alleges that the articles published by the Defendants were defamatory per se in that they imputed that he was dishonest and were understood by readers of the said newspapers and intended to mean the following:

"(i) the Plaintiff is unworthy of public trust or public office;

(ii) the Plaintiff is guilty of abuses of power and/or authority and has used his affiliations to obtain unduly favourable treatment;

(iii) the Plaintiff is guilty of securing unfair personal advantages;

(iv) the Plaintiff is dishonest and a liar;

(v) the Plaintiff is guilty of fraud;

(vii) the Plaintiff is corrupt;

(vi) the Plaintiff is guilty of deplorable and improper conduct;"

[7] In their amended plea and at paragraph 10 thereof the Defendants denied that statements complained of were defamatory per se in imputing dishonesty to the Plaintiff. In the alternative they

pleaded that the said articles were substantially true and for the public benefit. In the further alternative it was pleaded that the articles were substantially true and a matter for fair comment in the public interest. Finally and in paragraph 11 of the plea the Defendants deny that the said articles were printed, published and distributed by them wrongfully or with the intention to injure the Plaintiff as alleged. The Defendants pleaded that the publications were objective, reasonable and justifiable in the particular circumstances and were not made recklessly or negligently.

[8] The articles complained of are annexed to the Plaintiffs particulars of claim as annexures "WBA(i)", "WBA(ii)", "WBB" and "WBC. The allegedly offending paragraphs are highlighted and read as follows:

"WBA(i)" and "WBA(ii)" :

"COMMENT: REPOSSESS THAT VOLVO NOW!"

The Central Bank put paid advertisement in our newspapers denying any irregularities in the tender procedure and questioning the ethics and accuracy of our journalists.

You will recall that Senator Walter Bennett was allowed to purchase the vehicle as he allegedly made the highest tender bid.

We have since been told that there was in fact a higher bid by Reynecke and indeed it was in his contract terms that he would be allowed to bid for the Volvo which he did so at a price of E85,000.

How did Bennett get the car?"

REPOSSESS THAT VOLVO, NOW!

How did Bennett come so close to the bank's price which has since been denied by all the dealers the bank has claimed to have contacted? The Central Bank remained quiet about the matter this week, perhaps with good reason, because they haven't got a good reason.

We have not forgotten that Senator Bennett owes the Swazi Bank over half a million Emalangeni. How can he therefore, afford to pay E60,000 for a Volvo and give away cattle to a visiting dignitary that takes his fancy?

We call upon senators to demand that the Central Bank repossess the vehicle and call for fresh tender bids."

[9] The above statement is in my view not defamatory. The

statement merely reports the fact that the Central Bank of Swaziland had denied an earlier report published by the Defendants that there was something wrong with their tender system and that there was an irregularity with the sale of the Volvo.

The article also queries the Senate's silence and inaction with regard to the matter and calls upon it to demand that the Central Bank of Swaziland repossess the Volvo and call for fresh tenders.

There is nothing in the article which would make an ordinary reader thereof conclude that the Plaintiff is dishonest or is any of the things set out in paragraph 6 hereinabove. The action fails with regard to this statement.

[10] The article complained of in "WBB" reads as follows:

"What was it this time, viewers wondered, which had so irritated the voluble Senator? Gays, foreigners, and the Times of Swaziland are the usual suspects.

In fact, Wally was irked by a Times SUNDAY investigation into the incredibly lucky deal he had made to buy a luxury Volvo sedan from Central Bank for the fire-sale low price of E60,000.

The "deal" was literally too good to believe, and few people did believe it. Car owners throughout Swaziland and those who aspired to own cars felt their skin itch with envy. "If only I was

a well-connected insider, I could swing deals like this.

And yet, and yet, and yet, a nagging suspicion remained in the mind of the public. The Volvo was valued at E125 (XX). Anyone with any reasonable expectation of obtaining the car, given the unknown competition of seal bidding, would have to submit a bid at or approaching the car's value, or forget about getting it.

Yet Bennett submitted a bid of half the car's value. How could he have been so confident unless he knew something?"

This paragraph is in my view defamatory per se of the Plaintiff but I shall return to it later.

[11] The next paragraph is headed "*LIAR, LIAR PANTS ON FIRE*".

Extracts therefrom read as follows:

"Parents tell children fairy tales and fables as a way to acclimatize the growing youngsters to social rules. Without an understanding of these rules, a child may become a misfit or, worse, a criminal.

The fable of "The Boy Who Cried Wolf instills an appreciation of honesty.

Like all fables, this one vividly illustrates to youngsters the need to be believable at all times. If people think you make up stories to serve your own interest, it will come to

pass that when you really need them to believe you, they won't."

Counsel for the Plaintiff argued that the above statements referred to the Plaintiff. In my view the aforesaid paragraphs do not relate to the Plaintiff and even if they did they are not defamatory, they are harmless satire.

[12] The above article continues as follows:

"Are government functionaries liars or honest people? Frankly, it does not matter which they are, because the people will assume, from past experience, that they are dishonest."

This statement is clearly a view held by the author of the article as to what he thinks of the system of government and is not imputing his view on the Plaintiff. The writer is merely exercising his freedom of speech.

A submission was made that the Plaintiff was a government functionary and that the article indirectly referred to him as being dishonest and a liar. This idea is too farfetched to contemplate even if the Plaintiff had pleaded innuendo.

I now return to the statements which I view as defamatory per se of the Plaintiff. The following statements are defamatory of the Plaintiff:

*"In fact Wally was irked by a Times Sunday investigation into the incredibly lucky **deal** he had made to buy a luxury Volvo Sedan from Central Bank for the fire-sale low price of E60,000.00. "The "**deal**" was literally too good to believe and a few people did believe it. Car owners throughout Swaziland and those who aspired to own cars felt their skin itch with envy. "**If only I was a well connected insider, I could swing deals like those.**"*

The article continues as follows after some intervening paragraphs:

*"... Yet, Bennett submitted a bid of half the cars value. **How could he have been so confident unless he knew something?**" (Annexure WBB) (My emphasis).*

[15] Counsel for the Defendant submitted that there was no nexus between the Plaintiff and the Central Bank of Swaziland with regard to the "deal." (My quotes) She continued that what was clear was that the motor vehicle was bought for far less than its actual value and she wondered why should the fact that Plaintiff got a bargain be seen as an imputation on his character.

[16] Counsel for the Defendant went on to submit that there was no prima facie defamation and concluded that the Plaintiff should have pleaded secondary meanings and innuendo as he had inner access to the bank and was suspected of having had inside information.

[17] In my view it is the reference to "**cutting a deal because of inside information**" which establishes defamation per se. The inescapable implication is made that the Plaintiff was dishonest. This implication would readily be apparent to any ordinary reader of the articles.

[18] Publication of a defamatory statement (or other defamatory material) gives rise to two presumptions: that the publication was unlawful and that it was made *animo injuriandi* i.e. with a deliberate intention to inflict injury. While the two presumptions arise from the same event, they are essentially different in character. The presumption of *animus injuriandi* relates to the defendants subjective state of mind; the presumption of unlawfulness relates to objective matter of fact and law. (**Hardaker v Philips** 2005 (4) SA 515 AT 524 **Neethling v Du Preez and Others**; 1994 (1) SA 708 (A) at 7681 -769A.

"Until comparatively recent times, there was a doubt as to the nature of the onus of rebuttal. It is now settled that the onus on the defendant to rebut one or other presumptions is a full onus, i.e. it must be discharged on a preponderance of probabilities. (Mohamed and Another v Jassiem 1996 (1) SA 673 (A) at 709H-1) A bare denial on the part of the defendant will therefore not suffice. Facts must be pleaded by the defendant that will legally justify the denial of unlawfulness or animus injuriandi as the case may be. (National Media Ltd v Bogoshi 1998 (4) SA 1196 (SCA) (Hardaker v Philips

supra at p. 524)."

[19] The Defendants did not plead facts upon which they intended to rely especially the true value of the motor vehicle as being the amount of E125,000.00. The Defendants cannot rely on their bundle of documents as discovered with regard to this fact. In their bundle of documents is information received from dealers both from Swaziland and South Africa as to the value of the motor vehicle but this information is hearsay and is not admissible.

[20] The Defendants did not plead that there was a higher bid of E85,000.00 from a certain Mr. Reynecke. They did not discover this document. The information in the articles in the bundles of documents does not take the matter any further as it too is hearsay.

[21] I need not go into detail with regard to the two alternative pleas advanced by the defendants namely that the portions of the said articles are substantially true and for the public benefit as Counsel did not really canvass these nor the contents of paragraph 11 of the defendants' plea.

[22] In the event this Court finds that:

(a) the Plaintiff was defamed in his good name by the use of the words "cutting a deal because of inside information" with the Central Bank of Swaziland thus

imputing dishonesty to the Plaintiff.

(b) the parties have undertaken to negotiate quantum of damages and in the event that they do not reach an amicable agreement the Court shall decide thereon.

(c) the parties have each been successful with regard to the action, therefore each party is ordered to pay its own costs including that of their respective Counsel.

Q.M. MABUZA-AJ