

**THE HIGH COURT OF SWAZILAND**

**JUSTICE SIMELANE**

Applicant

And

**SIBONGILE DLAMINI**

Defendant

Civil Case No. 1119/2004

Coram

S.B. MAPHALALA - J

For the Applicant

MR. ZWANE

For the Defendant

IN ABSENTIA

JUDGMENT

(11<sup>th</sup> April 2006)

[1] Plaintiff was granted judgment by default against the Defendant for defamation of character and the issue of the *quantum* of damages was to be proved at a later date. On 19<sup>th</sup> August 2005, Counsel for the Plaintiff filed an affidavit in proof of damages.

[2] The Plaintiff is an adult Swazi male employee of Ellerines Furniture in Mbabane as Branch Manager. The Defendant is Sibongile Dlamini, an adult Swazi female, employed by Swaziland Investment Promotion Authority in Mbabane.

[3] The cause of action between the parties arose this way. In or around March 2004, the Defendant paid a deposit for a particular stove at the Plaintiffs place of employment which stove was at that time on special, that its price had been reduced. A few days after payment of the deposit, which Defendant had paid in cash, the Defendant came back to Plaintiffs workplace and advised that she had changed her mind and no longer needed the stove and wanted her deposit back. As Plaintiff was Manager he was charged with the responsibility of processing the refund and as Defendant had come in the morning whilst he was still busy he asked her to come later just before the shop closed to allow him time to process the refund. He then proceeded to prepare her a cheque for the full amount of the deposit she had paid. To his surprise when he presented the cheque to Defendant she became angry and aggressive and refused to take it, demanding that she wanted her refund in cash as she had paid cash. He tried to reason with her whilst at his desk within the shop but she could take none of his explanation. Seeing that he was not making headways he stood up from his chair to finalise other transactions as it was already after 5.00pm. After the closing time for the shop he had other responsibilities to attend to before leaving for home. The Defendant blocked his way and started calling him names, alleging that he acted as if he owned the shop, stating that she would fix him, as he was too proud. He moved past off course touched her as she was on his way.

[4] The other staff members all tried to explain to Defendant but she was fuming and leaving the shop. After sometime, however, one staff members, Elliot Manana eventually convinced her to take the cheque. To his surprise further he was the following day fetched by the police from the Mbabane Police Station and taken to court on charges of an alleged assault on the Defendant. The police immediately took him to the Swazi National Court in Mbabane whereat the trial proceeded. He was convicted at the court for assault on the evidence of Defendant alone. He was never allowed to call his witnesses despite his request to do so. He was eventually cleared of the conviction on review.

[5] The Plaintiff avers in his affidavit in proof of damages that even though he was eventually cleared of conviction on review, his self-esteem and reputation was greatly affected by the turn of events. The story of his conviction was well covered in the local print media thus even tarnishing his image. He alleges that he was painted as a violent person and worst of all a person unfit to hold a managerial position as, from the allegations, he resorted to physical violence when faced with problems at work. After the case in court he was dismissed at work for a period of over three months where he lived a very difficult life whilst trying to appeal his dismissal at work. Even though he was eventually re-instated

at work this matter still featured frequently in the local newspapers.

[6] The Plaintiff avers further that his improper trial and conviction and the subsequent publishing of articles in newspapers painting him as a violent person and his eventually suffering at his workplace where all as a direct result of Defendant's false accusations against him. Defendant set out to humiliate him by laying false assault charges against him thus she did humiliate and did tarnish his image before the whole nation.

[7] Further that Defendant knew that he was a former soccer player in the elite League therefore known by a number of people and that a criminal case against him would draw the attention of the newspapers also considering his position at work.

[6] It is an actionable wrong to institute, or cause to be instituted criminal proceedings against any person maliciously and without reasonable cause, to entitle the accused to succeed in a subsequent civil action for damages, however, he must in principle show either that the proceedings caused him patrimonial loss or that the offence with which he was charged was calculated to injure his reputation. But this requirement is of little practical importance, because in nearly every case he would have incurred legal costs in defending himself against the charge brought against him, and it had been held that he can recover any such costs reasonably incurred as patrimonial loss, (see *R.G. McKerron, The Law of Delict, 7<sup>th</sup> Edition* at page 259 and the cases cited thereat).

[7] In the South African leading case of *Hart vs Cohen (1899) 16 SC 363 at 368 De Villiers CJ* after stating that *Voet* 14.10.7 includes under "real injuries" bringing a person into court *vexationis causa* and arresting a person under a writ obtained *dolo malo* continues as follows:

"For such vague generalities and decisions of this court have substituted the more precise and intelligible rule that acts done under the sanction of and within the limits of the authority conferred by judicial process are not actionable as "injuries" unless done maliciously and without reasonable cause. The rule, although directly traceable to the influence of English law, has its origin in principles which are common to the Roman law and the law of England".

[8] In the instant case Counsel for the Plaintiff conceded when the matter was argued that defamation of character *per se* has not been proved but Plaintiff can succeed in the other heads of claim, namely humiliation, causing wrongful prosecution and *contumelia*. In this regard I am in total agreement with Counsel and after considering all the facts before me and the arguments cited above I have come to the considered view that Plaintiff succeeds as follows: In respect of humiliation a sum of E10, 000-00 would serve the justice of the case. In respect of causing wrongful prosecution a sum of E10, 000-00 would serve the justice of the situation. In respect of *contumelia* a sum of E10, 000-00 will be appropriate in the circumstances.

[9] In the result, for the afore-going reasons judgment is granted against the Defendant as follows:

- i) To pay a sum of E10, 000-00 in respect of humiliation;
- ii) To pay E10, 000-00 in respect of causing wrongful prosecution;
- iii) To pay a sum of E10, 000-00 in respect *of contumelia*;
- iv) Interest thereon at the rate of 9% per annum calculated from date of issue of summons to date of payment; and Costs of suit thereof.

**S.B. MAPHALALA**  
**JUDGE**