

THE HIGH COURT OF SWAZILAND

TERESA DLAMINI

Applicant

And

HUNTER SHONGWE

Respondent

Civil Case No. 2074/2004

Coram: S.B. MAPHALALA-J

For the Applicant: MR. ZWANE

For the Respondent: IN ABSENTIA

JUDGEMENT

(11th April 2006)

[1] The Plaintiff was granted an order by default on a claim for defamation and/or *contumelia* and the issue of damages was postponed to another date to allow the leading of oral evidence on the *quantum* of damages. The cause of action is clearly outlined in the Plaintiffs Particulars of Claim from paragraphs 3 to 10 thereof as follows:

3. On the 18th January 2004 the Defendant allegedly, acting in his capacity as a private investigator on engagement of the Plaintiff's employer, Tuntex, raised Plaintiffs flat at Matsapha allegedly in search of Tuntex's stolen goods.
4. The Defendant raid on Plaintiffs flat was done in an aggressive manner with Defendant brandishing his revolver and warning Plaintiff not to try and run away.
5. The said raid was further done in early morning hours and in full view of all other tenants to the flats adjacent to Plaintiffs flat.
- 6 Pursuant to Defendant's raid certain item of Plaintiffs clothes were taken by Defendant and Plaintiff shoved into Defendant's motor vehicle with Defendant announcing to everyone who cared to listen that Plaintiff was being taken to the police for theft.
7. The whole incident greatly embarrassed and humiliated Plaintiff.
8. Plaintiff was further defamed by the Defendant who called her a thief and handled her like a harden criminal in full view of her neighbours.
9. The said humiliation, embarrassment and defamation of Plaintiff by Defendant was both unnecessary, illegal as Defendant had no right to search Plaintiffs place of resident and without and reasonable basis.
10. Due to the humiliation, embarrassment and defamation of her character Plaintiff suffered damaged in the total sum of E150, 000-00 made out as follows:

Humiliation	-	E75, 000-00
Defamation	-	E50,000-00
Contumelia	-	<u>E25,000-00</u>
		E150, 000-00

11. Despite demand having made on Defendant by Plaintiff for compensation as aforesaid the Defendant neglects and/or refuses to pay.

[2] On 16th August 2005, the Plaintiff filed a Notice of set-down accompanied by an affidavit in proof of damages. In view of this affidavit I reserved judgment on the matter as I was of the considered view that the leading of *viva voce* evidence would not be necessary.

[3] The Plaintiff deposed in her affidavit in proof of damages in paragraphs 4 to 19 thereof as follows:

4. I more fully confirm that I was deeply hurt, humiliated and embarrassed by the incident of the 18th January 2004.
5. The Defendant came to my place of residence which is situated in Matsapha in the early morning hours around 6.30am just at the time when everyone around was preparing to leave for work.
6. I was also getting ready to leave to work, however inside my flat.
7. I was shaken by a hard knock on my door and as I opened my door I found Defendant standing by the door with a gun on hand.
8. He immediately introduced himself and advised that he had been hired by my employer Natex to investigate stolen goods and that he had come to search my flat.
9. Since I had just waken up I advised Defendant that I needed to go to the toilet, a pit latrine

shared by tenants but Defendant suddenly became apprehensive and prevented me from going to the toilet advising on top of his voice that I should not dare run away as he would shoot me.

10. He then shoved me roughly into my room as he followed inside. I became helpless as I watched him go through my wardrobe and all clothes inside the flat picking and choosing those he wanted without any explanation as to the type of clothes he was looking for.

11. He eventually dragged me out of the flat holding me by my wrist and in the process talking loudly that I was being taken to the police station for theft against my employer.

12. He shoved into his motor vehicle and took me to the police station at Matsapha

13. From the time Defendant prevented me from going to the toilet and due to his ability to talk loudly I could see that almost all my neighbours attention had been drawn.

14. I do not know how each and everyone of my neighbours considered the situation but I did feel I had been portrayed to them as a criminal. The manner in which I was handled and the utterances by the Defendant all went to be - little me.

15. What made matters worse is that the police simply sent me back home.

16. I still went back to work and my employer never mentioned a word to me about theft charges against me.

17. I believe the Defendant, even if assigned to investigate theft at my place of work became carried away and started harassing all employees of my employer.

18. It is further my feeling that he had no authority to force himself into my flat.

19. For all these embarrassment and humiliation I submit I am entitled to claim for the compensation stated in the Particulars of Claim.

[4] In arguments before me Counsel for the Plaintiff submitted that the above-cited averments prove *contumelia*. He conceded however, that the above-cited averments do not prove defamation but *contumelia*. He cited the cases *o f Brewer v.s*

Botha 1956 (3) S.A. 257 (T) and that of *Botha Vs Pretoria Printing Works Limited 1906 T.S.* at page 714. In the latter judgment Counsel relied on what was said by Innes CJ to the following effect:

"When one man slaps another's face there may be no great pain inflicted and no doctors bill incurred, but the insult offered to the man attacked is a thing which the court unjustified in compensating by substantial damages". If court far law do not intervene effectively cases of this kind, then one of two results will follow - either one man will avenge himself for an insult to himself by insulting the other, or else he will take the law into his own hands. I do not think that the principle of minimising damages in actions on injuries is said. Where the injury is clear, substantial damages, ought as a general rule to be given.

[5] According to R.G. Mckerron in his textbook *The Law of Delict, 7th Edition, Juta & Company* at page 53 the interests of personality protected by the *actio injuriarum* are those interests "**which every man has, as a matter of natural right, in the possession of an unimpaired person, dignity and reputation**" the Plaintiff must therefore show that the act complained of constituted an impairment of his person, his dignity, or his reputation examples of such

acts are assaults of all kinds, the unjustifiable infliction of any restrict upon the liberty of another, the malicious and unwarranted institution of criminal proceedings against another (see *R vs Umfaan 1908 T.S. 62*).

[6] *Kelsey William Stuart*, in his textbook *Kelsey Stuart's The Newspaperman 's Guide to the Law, 5^h Edition* at page 73 states as follows: "**there are rights of personality other than the right to reputation which the law recognise every free man is entitled to enjoy. The law accordingly seeks to protect these other rights under the broad umbrella of what is known as the *actio injuriarum*".**

[7] In the leading case of *R vs Umfaan (supra)*.

"A wrongful act designedly done in contempt of another, which infringes his dignity, his person of his reputation. If we look at the essential of *injuria* we find _____ that they are three: The act complained of must be wrongful, it must be intentional, and it must violate one or other of those real rights, those rights *in rem* related to personality, which every free man is entitled to enjoy".

[8] The above therefore is the legal position which governs the present case. Indeed, on the facts of the present case which have not been challenged by the Defendant, he clearly 'conducted himself in an aggressive manner in the circumstances of the case. These instances are clearly outlined in Plaintiffs Particulars of Claim at paragraphs 5 to 9 of her Combined Summons as stated above. I shall therefore address only two heads of her claim as the third head that of defamation, Counsel for the Plaintiff has conceded that it does not apply on the facts of the present case. The remaining heads therefore are humiliation and embarrassment for the sum for E25, 000-00. It is my considered view on the basis of the legal authorities I have referred to above that for the head under humiliation and embarrassment a sum of E30, 000-00 would meet the justice of the case. As for the remaining head under *contumelia* a sum of E20, 000-00 would be appropriate, (see *Jonathan M. Burchell, The Law of Defamation in South Africa, 1985* at page 290 and the cases cited thereat).

[9] In the result, judgment in favour of the Plaintiff is granted as follows:

- i) Humiliation and embarrassment - E30, 000-00
- ii) *Contumelia* E20, 000-00
- iii) Interest thereon at the rate of 9% per annum calculated from the date of the issue of summons to date of final payment
- iv) Costs of suit.

S.B: MAPHALALA
JUDGE