

IN THE HIGH COURT OF SWAZILAND

QONDILE NDLOVU - DLAMIM

Plaintiff

And

NONHLANHLA BUCKHAM

Defendant

Civil Case No. 4264/2006

Coram

SB. MAPHALALA - J

For the Plaintiff

MR. SC. SIMELANE

For the Defendant

IN ABSENTIA

JUDGMENT

8th June 2007

[1] Plaintiff a school teacher at KaSchiele High School has filed a combined summons in terms of Rule 17 (1) of the High Court Rules for damages in the sum of E120, 000-00 as a result of defamatory statements made against her by the Defendant who is also a school teacher of the school where the Plaintiff teaches. The said defamatory statements were to the effect that Plaintiff was a woman of loose morals and that Plaintiff was not deserving to be a teacher in charge of the future of the pupils that she was teaching. Furthermore that Plaintiff's family had immoral tendencies and as such, Plaintiff could not be regarded as a role model for the pupils at school, who normally look upon teachers as their role models.

[2] In the Particulars of Claim Plaintiff further alleges that on the 22nd September 2006, the Defendant said that she was interested in having and engaging in sex with her husband and that she was a woman who liked older men with ties. Further that she was a whore who applied Zambuk to her genital parts to entice men to engage in sex with her. That Plaintiff's husband was a womanizer who had affairs with younger girls. Plaintiff further stated that these statements were said in full view and hearing of other teachers

who were present at the school staff-room and repeated in the school premises in full view and hearing of some students at the school.

[3] On the 9th March 2007 before Annandale ACJ (as he then was) leave was granted to the Plaintiff to prove damages by leading *viva voce* evidence of the Plaintiff. It appears to me that the order was then granted by default where Plaintiff was to lead *viva voce* evidence on the *quantum* of damages. The question of liability was determined by Annandale ACJ (as he then was) on the 9th March 2007.

[4] On the 30th March 2007, Plaintiff gave evidence under oath where she led the court to determine the *quantum* of damages. She deposed at some length on what happened at the staff-room on the 22nd September 2006, where Defendant made statements which were said in full view and hearing of other teachers who were present at the school staff-room, and repeated in the school premises in full view and hearing of some students at the school. She stated that the Defendant made a number of statements including one when she said Plaintiff was interested in having or engaging in sex with her husband. Further that Plaintiff was a woman who liked older men with ties. Furthermore that Plaintiff was a whore who applied Zamfouk to her genital parts to entice men to engage in sex with her. She further stated that Plaintiff's husband was a womanizer who had affairs with young girls. In evidence before court the Plaintiff stated that these statements hurt her self-esteem such that thereafter she suffered emotional problems and had to undergo counseling on a number of occasions. She further stated that she would like to be transferred to another school because of the stigma she now has as a result of the Defendant's statements.

[5] According to *Kelsey Stuart's Newspaper Guide to the Law, 5th Edition - Butterworths* at page 67 some of the factors which may be taken into account in assessing the amount of damages to be awarded are:

- (a) The conduct of the Defendant from the date of publication until judgment.
- (b) The manner of publication and the extent and effect of dissemination.
- (c) The character of the defamatory words, their falseness and the malice displayed by the Defendant.
- (d) The rank and position of the parties *in society* and any special relationship which existed between them.
- (e) The persons to whom the defamatory words were published.
- (f) The place, time and mode of publication.
- (g) The continuance of the circulation of the defamatory words.
- (h) The tardiness, inadequacy or absence of apology.

- (i) Republication intended or authorized.
- (j) The time of publication of the apology and the prominence of its publication,
- (k) Whether the defamer first employed the defamatory words or whether he simply repeated the defamatory words of another.
- (l) The character of the person defamed.
- (m) The responsibility which the Plaintiff may have to bear for bringing about the publication of the defamatory matter,
- (n) Absence or presence of actual ill-will towards the person defamed on the part of the defamer.
- (o) Any undue delay by the Plaintiff in bringing his action.
- (p) Whether the matter published was true, even if it was not published for the benefit of the public.
- (q) Any prolonged or obstinate failure by the defamer to do anything to assuage the hurt of the person defamed,
- (r) Whether the attack injured the defamed person in the way of his business or profession,
- (s) A decrease in the value of money.
- (t) The fact that robust language is common in political discussions.
- (u) The conduct of the Defendant in conducting his defence (e.g. did he seek to attack the Plaintiff's character, did he dispute his evidence unduly or did he seek to discredit his witnesses?)

[6] This list is not, of course, exhaustive. For a useful survey of the principles applied in assessing damages for defamation refer to *Kuper "Survey of the Principles on which Damages are awarded for Defamation"* (1966) 83 S.A.L.J. Page 477.

[7] In the present case the statements by the Defendant affected the Plaintiff in a negative way such that she now suffers from emotional problems and her self-esteem in the school environment as a teacher has been eroded such that she would like to work in another school environment. Having considered past awards by this court including the cases of *Micah Celucolo Mavuso vs Sabelo Mamba and others - Civil Case No. 1003/99 (unreported)* and that of *Lindifa Mamba and another vs Vusi Ginindza and others - Civil Case No. 1354/2000* I have come to the considered view that on the facts of the present case a sum of E65, 000-00 would be proper in the circumstances..

[8] In the result, for the afore-going reasons Defendant to pay a sum of E65, 000-00 to the Plaintiff as damages for defamation and also to pay costs of suit.

**S.B. MAPHALALA
JUDGE**