

IN THE HIGH COURT OF SWAZILAND

GADZABALA NKAMBULE

Plaintiff

And

SIBUKANILUKHELE

Defendant

Civil Case No. 4307/2005

Coram

S.B. MAPHALALA - J

For the Plaintiff

MR. T. MLANGENI

For the Defendant

IN ABSENTIA

JUDGMENT

21st September 2007

[1] The Plaintiff a senior citizen in the rural setting of Ebuseleni area near Hlathikulu in the Shiselweni Region has filed this action for damages arising

from defamation against his kinsman one Sibukani Lukhele. The said defamation was published to other people who were attending a meeting at the **umphakatsi** of Ebuseleni and Defendant is alleged to have publicly uttered words about the Plaintiff, to the effect that the Plaintiff was making moves to secure the installation of his son as Chief of the area.

[2] The exact words of what was uttered by the Defendant are found in the affidavit of one Sibongile Nkambule who was also present at the **umphakatsi** on or about July 2005, where they were gathered, having been called by the acting Chief of the area in a gathering of more than ten people, most of them being members of the immediate family. It is alleged that the Defendant, said the following words in the presence of all those who were present:

"Lomagadza ufuna kususa lo Sabelo bese ubeka Ntfutfuko Nkambule", translated to:

"Gadzabala wants to remove the Acting Chief Sabelo and instal his son Sabelo (sic) as Chief of the area".

[3] On the 14th September 2007, the Plaintiff gave *viva voce* evidence before this court on the question of the *quantum* of damages being led by his attorney Mr. T. Mlangeni. I must mention that Plaintiff was granted judgment by default by my Brother Annandale ACJ (as he then was) who ordered that Plaintiff ought to lead *viva voce* evidence in proof of damages in due course. Indeed, Plaintiff gave evidence before me as ordered by the learned Judge. The Plaintiff is an elderly gentleman of 78 years and has stated in-chief that he was much embarrassed by the defamatory allegations that have been made by the Defendant against him, particularly because it has sown seeds of hatred against him within the Nkambule family. He has stated that by virtue of the fact that he is an old man of about 78 years, a senior citizen of the area who until now, has had a very good relationship with other people in the area. The mention of his name in the context of chieftaincy disputes is an embarrassment to him. That it is

particularly embarrassing because the candidate Chief is his relative more so because he has played a major role in grooming the future Chief and is ready to introduce the prospective Chief to His Majesty, The King for appointment. In evidence the Plaintiff stated that as a result of this incident he has thought of committing suicide being caused by the social stigma he is enduring.

[4] In argument before me Counsel for the Plaintiff submitted very useful Heads of Argument on this case of defamation of character. In this case the people involved are simple rural folk such that the normal measure of damages would be more than a lifetime fortune to these people. It is contended for the Plaintiff that on the facts *in casu*, there is no apparent reason why the utterance complained of was made. The presumption then is made that the Defendant acted *animus injuriandi*.

[5] After many years of controversy and travail, it was finally settled by the Appellate Division in South Africa that intention or *animus injuriandi* is an essential element of defamation by an individual, as distinct from the press or public media (see *Suid Afrikaanse Witsaaiorporasie vs O'Malley 1977 (3) S.A. 394 A*). It appears to me that this court ought to follow this precedent as the above-cited legal authority in South Africa is persuasive in this court. Furthermore the legal principle propounded in the said case is founded on Roman-Dutch principles which operate in this country.

[6] Counsel for the Plaintiff further cited the local decision in the case of *Nxumalo v African Echo (Pty) Ltd t/a The Times of Swaziland 1987 - 1995 (2) S.L.R 183* to the contention that the test is whether the imputation tends to lower the Plaintiff in the estimation of right-thinking members of that particular society. On the measure of damages the court was referred to the South African case of *Muller vs S.A Associated Newspaper Ltd 1972 (2) S.A. 589 at 590 (A)*.

[7] In this court many judgments have been delivered over the years on this aspect of the matter where Defendants were members of the print media and these include the High Court case of *Micah Celucolo Mavuso vs Sabelo Mamba and others - Civil Case No. 1003/99*, *Lindifa Mamba and another vs Vusi Ginindza and others - Civil Case No. 1354/2000* and the recent High Court Case of *Priscilla Mbuli (nee Dlamini) vs Joshua Jele 1805/2006*.

[8] In the instant case Counsel for the Plaintiff contended that the amount of E10, 000-00 which is claimed is not *ex facie* excessive, and may be granted in view of the non opposition of the claim. Indeed it appears to me that the Plaintiffs case does not fall within the cases I have cited above in that Plaintiff and the Defendants are members of the rural folk such that the amounts of compensation given in the above cases is far out of the parties' reach. As a result of this I have adopted the quantification practiced in customary courts where a cow is a major standard in such disputes. One cow would be E1, 000-00. On the facts of the present case it is my considered view that a proper *quantum* of damages would be a sum of E8, 000-00.

[9] In the result, for the afore-going reasons Defendant to pay a sum of **E8, 000-00** as damages to the Plaintiff for defamation of character. Defendant to further pay costs of suit.

S.A. MAPHALALA

JUDGE