

**IN THE HIGH COURT OF SWAZILAND**

HELD AT MBABANE

Civil Case No. 225/2006

KHEMBA PHUTFUMA VILAKATI

Plaintiff

And

MACALENI DLAMINI

Defendant

Coram: S.B. MAPHALALA – J

For the Plaintiff: MR. S. MAGONGO

For the Defendant: IN ABSENTIA

JUDGMENT  
26<sup>th</sup> September 2008

[1] Plaintiff has instituted a combined summons against the Defendant for defamation of character in that in December 2005, on different dates unknown to Plaintiff, at Ebuhleni Royal Residence and Nkhanini respectively Defendant stated to the members of regiment and Plaintiffs workmates and concerning Plaintiff that he has been dismissed from work for stealing cattle belonging to the King.

[2] In his Particulars of Claim the Plaintiff contends that as a result of the defamation, he has been damaged in his reputation and has suffered damages in the sum of E1, 5000, 000-00 made up as follows. Firstly, for contumelia a sum of E491, 500-00. Secondly, for general damages a sum of E1, 000, 000-00 and thirdly, for costs of instructing an attorney a sum of E8, 500-00.

[3] The Defendant was served with the combined summons on the 27<sup>th</sup> January 2006, at 11.25hrs at Swazi National Treasury, Nkhanini in the Hhohho Region being the place of employment for the Defendant. The Defendant did not appear before court and the matter proceeded as a default judgment where the court heard *viva voce* evidence by the Plaintiff on the *quantum* of damages.

[4] The court granted Plaintiff judgment by default against the

Defendant and heard *viva voce* evidence of the Plaintiff on 5<sup>th</sup> June 2007.

[5] Plaintiff's evidence before this court was essentially what is averred in the Particulars of Claim where he, *inter alia*, stated that the statement by Defendant was and is wrongful and defamatory of Plaintiff. The statement was made with the intention to defame Plaintiff and to injure his reputation. The statement was understood by the addressee and was intended by Defendant to mean Plaintiff is a thief and cattle rustler.

[6] In a defamation suit Plaintiff has to show on a preponderance of probabilities that there was a publication of defamatory matter (by words or conduct) referring to him or her. (see *Jonathan Burchell - Principles of Delict 1993 Juta & Co.* at page 152 and the cases cited thereat).

[7] Counsel for the Plaintiff has cited a number of useful legal authorities on the question to be resolved by the court in this case. Counsel referred to the above-cited legal authority of *Burchell (supra)*, at page 152, *R.G Makerron, The Law of Delict, 1971 Juta & Co.* at page 5 and the South African case of *Ramakulusha vs Commander Venda National Force 1989 (2) S.A. 813* at 849 to the legal proposition "... **that it is the duty of the**

**court to assess the damages of Plaintiff as best it can, provided the court was satisfied that all the available evidence was put before it".** The court was further referred to the local decision in the matter of *Micah Celucolo Mavuso vs Sabelo Mamba and two others - Civil Case No. 1993/1999* and the South African case of *Norton vs Ginsberg 1953 (4) S.A. 394 at 399 (F)*.

[8] The present case is similar to a case I decided that of *Gadzabala Nkambule vs Sibukani Lukhele - Civil Case No.*

*4307/2007* on the 21<sup>st</sup> September 2007, where a senior citizen of 78 years was defamed by one of kinsman one Sibukani Lukhele that he wanted to remove the Acting Chief and install his son as Chief of the area. The Plaintiff in that case sought an amount of E10, 000-00 as damages for defamation of character. In that judgment the court held at paragraph [8] thereof that:

"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] Reference is also made to other judgments delivered by this court 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. 1003/1999, Lindifa Mamba and Another vs Vusi Ginindza and Others - Civil Case No. 1354/2000* and the recent High Court case of *Prinscilla Mbuli (nee Dlamini) vs Joshua Jele 1805/2006*.

[10] On the facts of this matter and the legal authorities of past awards by this court I have come to the considered view that a proper award of damages in the present case would be a sum of E30, 000-00.

[11] In the result, for the afore-going reasons judgment is granted in favour of the Plaintiff for the sum of E30, 000-00 and costs.

**S.B. MAPHALALA  
PRINCIPAL JUDGE**