

# IN THE HIGH COURT OF SWAZILAND

HELD AT MBABANE

CASE NO. 700/05

In the matter between :

RALPH HLOPHE

PLAINTIFF

AND

SICELO ZONDO

1<sup>st</sup> DEFENDANT

MARTIN DLAMINI

2<sup>nd</sup> DEFENDANT

AFRICAN ECHO (PTY) LIMITED

3<sup>rd</sup> DEFENDANT

ARNOT PUBLISHING COMPANY (PTY) LIMITED 4<sup>th</sup>  
DEFENDANT

FOR PLAINTIFF

MR. B.J. SIMELANE

FOR DEFENDANTS \_\_\_\_\_ (NO APPEARANCE)

## JUDGEMENT

28<sup>th</sup> August, 2009

[1] Ralph Hiophe, the Plaintiff herein, qualified as a high school teacher in 1990 and eight years later, he was appointed a deputy head-teacher. In the year 2005 he was the Deputy Head-teacher of Maguga Dam High School.

[2] On the 4<sup>th</sup> February 2005, an article, allegedly published of and concerning the plaintiff was published in the "Times of Swaziland" newspaper and was headed :

OUTRAGE: School closed as teacher threatens to bewitch, poison or stab colleagues." The said newspaper, according to the plaintiff, is owned by the 3<sup>rd</sup> Defendant, a Company duly incorporated under the company laws of Swaziland and has its principal place of business at Mbabane Industrial Sites. The 4<sup>th</sup> Defendant, Arnot Publishing Company (Pty) Limited is said to have "published" the Times of Swaziland Newspaper - presumably that edition of the newspaper that carried the offending article. The 2<sup>nd</sup> Defendant is an employee of the third Defendant and is the Editor of the said Newspaper. The first Defendant is also an employee of the third defendant and is the reporter under whose name the article in question appeared.

[3] The Newspaper aforesaid is, according to the unchallenged pleadings herein, widely distributed and read by the general public in the Kingdom of Swaziland. In his evidence in chief the plaintiff added that "the newspaper is read world wide and is available on the internet too."

[4] The plaintiff states further in his particulars of claim, which were substantially confirmed in his evidence before *rue*, that "10.The article aforesaid stated that Plaintiff: 10.1 Had threatened to bewitch, poison or stab and kill the teachers he is sharing a flat with.

10.2 Had threatened to use aggressive means to solve the accommodation problem.

10.3 Had threatened to incite students to engage in a strike within three weeks.

10.4 Had boasted about his bad reputation and

10.5 Was troublesome."

[5] The article in question does not refer to the plaintiff by name and merely refers to "one of the senior teachers" at the said school. A picture of the Head-teacher of the school Mr Jack Msibi appears alongside the article. The plaintiff alleges that the article refers to and concerns him because

"11.1 Plaintiff is the only senior teacher at Maguga Dam High School who was sharing a flat with Mprofethi Hlophe.

11.2 Plaintiff is the only senior teacher at Maguga Dam High School about whom a petition for his removal was drafted and forwarded to the Teaching Service Commission in February 2005.

11.3 Plaintiff is the only senior teacher about whom there was temporary i,- o;.> pfc&.,' oi classes at Maguga Dam High School in February 2005.

11.4 To the general public conversant with the matter, the community of Maguga Dam area where Maguga High School is based, and parents of learners at Maguga High School senior teacher referred to in the article is the plaintiff."

[6] The Plaintiff also avers that the said words are wrongful and defamatory of and concerning him in that "they were intended and were understood by readers of the newspaper that plaintiff is:

"12.1 a criminal who is capable of killing either by stabbing or poisoning a person in order to solve the accommodation problem he had.

12.2 A sorcerer who uses muti and is capable of bewitching his flat-mates in order to solve the above-mentioned problems that he had.

12.3 Person capable of doing unlawful acts like inciting students in order to solve the accommodation problem that he had."

[7] Finally the plaintiff ... that as a result of the defamatory article aforesaid, he has "been damaged in his good name and reputation as a teacher and has diminished his chances of promotion and being employed in other institutions and ...has suffered damages in the sum of E100,000.00..."

[8] The plaintiff informed the court in his evidence that his attention was drawn to the article by one of his colleagues, a certain Mr Mlotsa a teacher at nearby Bulandzeni who informed him whilst he was in Johannesburg that there was a defamatory article of and concerning him in the newspaper. He had subsequently read the article and it confirmed what his colleague had told him.

**[9]** Mr Hlophe testified that anyone who knew the then prevailing set-up at his school, would have known that the senior teacher referred to in the article was him because :

(a) there were only two senior teachers at the school and these were the headteacher and himself.

(b) anyone reading the article would know that the senior teacher referred to in the article was not the Headteacher because the latter had been interviewed ....was referred to therein by name and capacity aforesaid.

(c) Further, the article said the senior teacher in question was sharing a flat or apartment and he, the plaintiff, was the only senior teacher at the school who shared a flat with other teachers, namely Mprofethi Hlophe and Thamsanqa Dlamini.

(d) He was the only senior teacher against whom a petition had been filed with the Teaching Service Commission in 2005.

(e) He was the only senior teacher against whom other teachers at the school had complained resulting in a stoppage of classes and

(f) Was the only senior teacher who had been visited by his wife on the Friday in question.

[10] I observe here that in his evidence before me, Mr Mlota confirmed having spoken to the plaintiff about the article. He said the article referred to a teacher at the Plaintiff's school and whilst he knew that the plaintiff was its Deputy Head-teacher, he did not know how many senior teachers were at that school at the relevant time...

He testified that school children from plaintiff's school had also told him that they had been asked to stay away from school as a result of certain actions or deeds by their deputy head-teacher i.e. the plaintiff. That is the case as pleaded by the plaintiff and upon which he asks the court to find in his favour.

[11] I examine first the issue whether the article under consideration and in particular whether the senior teacher referred to therein may be understood by anyone to refer to the plaintiff. The plaintiff avers that because of the particulars or details of the aberrant teacher given in the article, the teacher in question can only be understood to be a reference to him. I examine this assertion below.

[12] The test for determining whether the publication of the offending words refers to or concerns the plaintiff is an objective one. In **Young v Kemsley 1940 AD 258 at 281** the court stated that:

"the test is whether the ordinary, reasonable man hearing the speech would have understood the words complained of to apply to Kemsley [plaintiff]."

Also in **A NEUMANN CC v BEAUTY WITHOUT CRUELTY INTERNATIONAL 1986 (4) SA 675 (C) at 679-80 TEBBUTT J** stated this requirement as follows :

"It is also trite that a plaintiff or applicant in a defamatory action must allege and prove that the defamatory matter was published of and concerning him. It must refer to or concern him personally (see Burchell the Law of Defamation in South Africa at 128; Goodall v Hoogendoorn LTD 1926 Ad 11 at 15; South African Associated Newspapers Ltd and Another v Estate Pelsler 1975 (4) SA 797 (A) at 810C; Knupffer v The London Express Newspaper Ltd (1944) 1 ALL ER 495 (HL)

and it is whether the ordinary reasonable reader would have understood the words complained of, in conjunction in this case with the picture, to apply to the plaintiff or as in this case to the applicant ... This gives rise to a two-stage inquiry. Firstly, whether the words (with the picture) are reasonably capable of referring to the plaintiff or applicant. This is a question of law and can be decided on exception. Secondly, and if the answer to the first part is in the affirmative, whether a reasonable person would regard the words as referring to the plaintiff or applicant. This is a question of fact on which evidence would be admissible."

[13] As the matter is not defended, no exception has been raised and i shall, purely for purposes of this judgement, assume, without deciding the issue, that the words in this action are reasonably capable of referring to the plaintiff. He was after all a teacher at the relevant school and was also the Deputy head-teacher and therefore may also be said because of that status as Deputy head-teacher, to have been a senior teacher. That disposes off of the first inquiry - its answer being in the affirmative.

[14] The facts relevant to the second inquiry are as stated by the plaintiff and set out in paragraph 9 above. Firstly, the plaintiff was unable to define with any degree of clarity or precision what is meant by a senior teacher. Seniority in this context could either be by academic qualification, tenure of service, age or in terms of administrative office or hierarchy. Neither he nor the article clarifies this. His evidence was simply that because he was the second in-charge at the school - after the headmaster - he was a senior

teacher. He was, however, quite candid or frank enough to say that ... The ambit of the inquiry is further restricted or lessened in my view by the fact that the other facts or incidents relied upon by him, such as being the only senior teacher at the school who was visited by his wife on the relevant Friday and was sharing an apartment with particular persons, could only be known to people with special and intimate knowledge of the set up at the school. For example, whilst Mr Mlota knew that the plaintiff was the Deputy headteacher at the school, he was, on reading the article, unable to identify the senior teacher referred to therein as the plaintiff. The rest of the information Mr Mlota had was supplied to him, not by the newspaper article but by the school children from his school, Bulandzeni High ...

[15] The article refers to one of two teachers sharing a flat with Mprofethi Hlophe. The name of the other teacher, Thamsanqa Dlamini, was supplied to the court in evidence by the plaintiff himself. It does not appear in the article and I see no reason to think that even those who knew the house sharing arrangement at the school would inevitably think that the article referred to the plaintiff and not Thamsanqa.

[16] The plaintiff has not led any evidence before me to show that any particular person or persons were aware of these special features or facts he relies on as a clear reference to him. Even persons who knew him as the Deputy Head-teacher at the school would not, in the absence of any particular knowledge of the issues he relies on as identifying him, have known that the article was published or concerning him.

[17] In view of the above deficiencies in the evidence by the plaintiff, I am of the considered view that the plaintiff has failed to prove that the ordinary reasonable reader would understand the article as referring to and concerning him. Consequently the action is dismissed.

MAMBA J