



IN THE HIGH COURT OF SWAZILAND

HELD AT MBABANE

Civil Case No. 23/2007

PAULOS MOTSA

Applicant

And

CANNAN MANDLENKOSI BHEMBE

Respondent

Coram
For the Applicant
For the Respondent

S.B. MAPHALALA - J
MR. T. MLANGENI
INABSENTIA

JUDGMENT
19th March 2009

[1] The Plaintiff Paulos Motsa has filed a combined summons against one Cannan Mandlenkosi Bhembe cited as the 1st Defendant and his wife Lomkhosi Bhembe cited as the 2nd Defendant for defamation of character.

[2] Plaintiff in his Particulars of Claim avers that on diverse occasions during the period of September to November 2006 and at Bhunya in the Manzini Region, the Defendants publicly stated of and about the Plaintiff that he was a witch, **“umtsakatsi”** that the reference to Plaintiff by Defendants as **“umtsakatsi”**, and various other innuendo to the same effect, was intended to and did in fact have the effect of injuring the Plaintiff, who is well known in the Bhunya community, is now regarded as an evil person who is capable of killing by traditional medicine.

[3] The Plaintiff contends that as a result of the injury in his good name and reputation the Plaintiff has incurred damages in the amount of E100, 000-00. The Defendants are liable, jointly and/or severally, to compensate the Plaintiff in the said amount.

[4] The Defendants have not filed any defence to these claims and Plaintiff was subsequently granted default judgment. The issue of the *quantum* of damages was postponed to a later date.

[5] Indeed, on an appointed date the Plaintiff gave *viva voce* evidence under oath in proof of damages. Later on Counsel for the Plaintiff filed very useful Heads of Arguments for which I am grateful to Counsel for his high sense of professionalism.

[6] It is contended for the Plaintiff that in defamation matters the court has a wide discretion on *quantum*. Relevant factors include the following:

- character and status of the Plaintiff;
- the extent of publication;

subsequent conduct of the Defendant e.g. apology.

[7] In the present case Defendant's persisted with the allegation of witchcraft. In this regard the court was referred to the case of *Muller vs S.A. Associated Newspaper Ltd 1972 (2) S.A. 589 at 595 A* and the local decision in *Nxumalo vs African Echo (Pty) Ltd t/a Times of Swaziland*

1987 - 1995 (2) S.L.R. 183. In the latter judgment the Plaintiff was reported to have been arrested for the theft of dogs, which was not correct. The Plaintiff was awarded E10, 000-00, the judgment being dated 17th March 1998.

[8] According to the *Quantum Year Book 2000* by Robert J Koch the value of E10, 000-00 in 1987 is E67, 000-00 in 2009.

[9] Having considered the above legal authorities and the range granted by this court in a number of cases including that of *Gadzabala Nkambule vs Sibukani Lukhele - Civil Case No 4307/2005*. I have come to the view that on the facts of this case a proper measure would be E30, 000-00 against the Defendant jointly and/or severally. Further, Defendants to pay costs of suit.

S.B. MAPHALALA

PRINCIPAL JUDGE