



## IN THE HIGH COURT OF SWAZILAND

Held at Mbabane

Case No.1138/99

In the matter between:

**BOYCEY MAGONGO**

**Plaintiff**

and

**RAPHAEL MHLANGA**

**1<sup>st</sup> Defendant**

**AFRICAN ECHO t/a THE TIMES OF SWAZILAND**

**2<sup>nd</sup> Defendant**

**Neutral citation:** *Boycey Magongo vs Raphael Mhlanga and African Echo t/a Times of Swaziland (1138/99) [2014] [SZH 09]*

*(11 February 2014)*

**Coram:** Hlophe J

**For Plaintiff:** Mr. S. Dlamini

**For Defendants:** Mr. P. E. Flyn

## Summary

*Civil Law – Defamation – Plaintiff complained of having been defamed by the Defendants through the publication of certain alleged defamatory articles – Whether articles are indeed defamatory – When publication of articles can be said to be defamatory – Defamatory articles can either be per se defamatory or an innuendo – When a publication is per se defamatory – When an article or publication amounts to an innuendo – status of articles complained of – Some of the articles per se defamatory – Whether any of the defences avail Defendants – Defendants contending that words in the context of the articles are in essence true and that the concerned publications were in the public interest as well as that in so far as the words complained of were expressing an opinion, they constituted fair comment on a matter of public interest with the facts upon which such comments are based being in essence true – Whether any of the pleaded defences availed the defendants in the circumstances – Pleading defences not availing the Defendants in some of the articles – Accordingly Plaintiff defamed and deserving to be compensated considerations on compensation to be awarded Plaintiff -*

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## JUDGMENT

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[1] Several articles were published on various dates in a Newspaper owned by the second Defendant. The articles concerned were about the Plaintiff. Precisely they were published on the 9<sup>th</sup> January 1999, the 13<sup>th</sup> January 1999; the 23<sup>rd</sup> January 1999 and on the 21<sup>st</sup> March 1999. Copies of the articles concerned were annexed to the summons and were marked BM1,

BM2, BM3 and BM4 respectively. It merits mention however that what has been referred to as the article of the 13<sup>th</sup> January 1999, is in fact a letter apparently addressed to the Sports Editor of the Defendants Newspaper where it was published. I shall however, for practical purposes herein, continue to refer to it as an article as was done in the pleadings exchanged between the parties.

[2] The Plaintiff contends that the said articles were defamatory of him and that they were published recklessly and maliciously, with the intention to defame him and that they indeed did defame him. In line with this contention the Plaintiff instituted the current proceedings against the Defendants and claimed payment of a sum of E500, 000.00 (Five Hundred Thousand Emalangeni) as damages for his being allegedly defamed.

[3] The contents of the articles in question are not in dispute. What is in dispute is however the meaning attributed to the words together with the effect the said words as used in the said articles had. Otherwise the four articles were respectively published under the following headings:-

1. "What does Boycey Magongo want now?"
2. "Boycey Magongo cannot be trusted."
3. "Boycey just has to refund the people."

#### 4. “Boycey Magongo should be fired.”

[4] A summary of the article of the 9<sup>th</sup> January 1999, which is under the heading, “What does Boycey Magongo want now” is to the following effect:-

4.1 That the Plaintiff is a controversial person who seems all out to paint the sport black.

4.2 Most of the things he accused the sport of are unfounded and this conduct is the kind of noise that scares sponsors away (from the sport).

4.3 He has unjustifiably and persistently fought the Swaziland Tennis Association to the extent of reporting them or it to the International Tennis Federation,

4.4 He had colluded with some players to pass a vote of no confidence against the Tennis Association to which he was an Executive Member, thereby exhibiting ignorance of his association’s own constitution which prohibited players from taking action against it as they were not its affiliates. (The action they took being one reserved for STA’s affiliates, the clubs).

4.5 The tennis Association was urged to do something about this and to stop him now because if he was allowed to go unchallenged he would take tennis as a sport backward.

4.6 He was not even supposed to be part of the Executive Committee given that his club was not in good standing with the association as it was owing its subscriptions.

[5] A summary of the article of the 13<sup>th</sup> January 1999, BM2, (in reality the letter) titled, “Boycey Magongo cannot be trusted”, can be summarized to the following effect as concerns the Plaintiff:-

5.1 Mr. Magongo (the Plaintiff) falsely asked for donations said to be for a tournament overseas.

5.2 These funds are suspected to have been later used to establish Plaintiff’s shop at the Swazi Plaza which closed suddenly.

5.3 Although upon realizing that the members of the public were now aware of what he was doing, he purported to apologise through the newspaper he was colluding with, promising to pay back the money he had swindled them, this he has not done to date.

5.4 Still using the swindled funds, and after the failure of the Mbabane shop, he went to establish another one at Tiger City Manzini, which could not last four months.

5.5 The STA members have had their images tarnished by a person who had nothing to lose in the Plaintiff.

[6] The article published on the 23<sup>rd</sup> January 1999, BM3, titled “Boycey just has to refund the people” can be summarized as follows in its meaning and effect:-

6.1 The Plaintiff has finally been suspended by the Swaziland Tennis Association following a meeting at which he failed to substantiate his allegations and actions against the association.

6.2 His suspension should not be an end in itself but should be followed by appropriate sanction as his actions would have had long term effect on the sport concerned.

6.3 He should be grilled heavily to account for the money he obtained unsportingly from innocent and unsuspecting members of the public between 1993 and 1995.

6.4 Boycey enticed the public into buying raffle tickets with a Nissan Sedan which was to be won as the first prize.

6.5 He had undertaken the fundraising under the pretext that he wanted to raise funds to attend training at a certain tennis academy in the United States of America.

6.6 The prizes for this raffle had still not been won as of the date on which the article was published.

6.7 But all of a sudden he opened a sports shop and never went to the academy. This raised a lot of suspicions about the purpose of the fund raising though nothing was said about it.

6.8 That no one has lodged an official complaint about the money should not be an excuse for Boycey not to account for it because what he did was despicable.

6.9 Boycey had chosen to remain silent about the money and had chosen not to tell the public where it went to let alone apologise to the people who thought they were supporting a good cause.

6.10 While Boycey is sitting comfortably enjoying the success of his business, some of the people he conned might be struggling with life.

6.11 The STA would have done the public justice if it could act swiftly and ensure, with the help of the police, that the cheat is brought to book.

6.12 For the STA to make progress with the case, it had to obtain statements from the victims.

6.13 We therefore call upon those who bought the raffle tickets and fell victims of the trickery to contact the STA executive as soon as possible.

[7] The article published on the 21<sup>st</sup> May 1999, BM4, titled “Boycey Magongo should be fired” can be summarized as follows in its meaning and effect.

- 7.1 The Tennis Association should fire controversial Vice President, Boycey Magongo immediately before the image of the sport suffers further damage.
- 7.2 Magongo has always accused the tennis body of anything one can think of, to the extent of producing a useless petition directed against the Executive to which he was also a member.
- 7.3 He was a fame seeking man who went as far as the International Tennis Federation to paint the STA black whilst presenting a clean (white) image of himself.
- 7.4 A lot had already been said about the Plaintiff such that this article could amount to flogging a dead horse or raking up ancient wrongs.
- 7.5 The purpose of the article was to save the sport from further embarrassment by people who thought they were the wisest ever created on earth.
- 7.6 We do not need cry babies or angels in sheep's skins in the association (STA).
- 7.7 We do not need people who would sacrifice the image of the sport for their own selfish ends.
- 7.8 Most of the allegations he has put forward are unfounded and non-factual.



- 7.9 It is very sad to see such a lovely sport being dragged into a bottom pit by a clown who only wants fame and money.
- 7.10 Mr. Magongo initially presented himself as an honest man with bright ideas; and from his declarations he wanted the sport to reach greater heights he could have misled one to appoint or support his becoming the president of the STA.
- 7.11 Whereas he had presented himself as a Messiah, it was clear he was nothing but a critic who would be suited by all sorts of names the world can prosper without
- 7.12 Looking for leadership qualities from him was similar to looking for a virgin at the Why Not. (It is common knowledge that the “Why Not” was a place where half naked girls would perform certain dances that is, it was striptease.
- 7.13 He has a way with words and arguing with him was like wrestling with a greased pig at a village fair.
- 7.14 He criticized the STA like his whole life depended on it. People like him were not needed in small sports which still needed exposure.
- 7.15 Tennis can do without him; it was emphasized.
- 7.16 He is “believed to have collected money from sponsorships with the claim of going to represent the country in a tournament in

Australia and he claimed the money was for accommodation and when he arrived in the country he slept in a tent”.

7.17 “You can imagine a man who loves money so much that he can afford to withstand all the cold not just for one night but a week, if not more”.

7.18 “Again he is believed to have deceived the nation by claiming there was a bakkie to be won and raffle tickets were out and sold to the public for a car that never was”.

7.19 “He never mentioned the car again and the public were swindled their money and the rest is history. He must be rich, I suppose”.

7.20 Soon after his appointment as Vice President, he went wild digging up ancient wrongs and colluded with tennis players to petition the executive of which he was a member with a long list of grievances which were themselves not directed to the appropriate body but to the media.

7.21 If he had realized the dictates of the position he would have simply raised the grievances concerned in an executive meeting where they most likely would have been resolved.

7.22 What was Plaintiff trying to achieve by involving innocent players in his smear campaign?

7.23 It is hoped he was aware of the damage to the STA caused by his statements in the media.

7.24 He was now left where the sun never shone and it was prayed that he stays there until the son of man comes back.

[8] It was contended by the Plaintiff per paragraph 5 of the Particulars of Claim that the words in the context of the articles referred to in the foregoing paragraphs were false, malicious and defamatory of the Plaintiff.

[9] At paragraph 6 of the said Particulars of Claim. It is alleged as follows:-

6. *“The said words in the context of the said articles are wrongful and defamatory of Plaintiff in that they were intended and understood by readers of the Newspapers to mean that Plaintiff is dishonest in the following respects.*

6.1 *That he is a fraudster who has previously defrauded the public of monies through the sale of raffle tickets thereby committing theft by false pretences.*

6.2 *That he used the defrauded monies to establish a shop;*

6.3 *That Plaintiff has continuously and without foundation peddled ill-will among potential sponsors of the Sports Council domestically and towards the sport.*

6.4 *That Plaintiff is incompetent and an undesirable element within the Swaziland Tennis Association Executive Committee;*

6.5 *Further that Plaintiff in the article dated the 21<sup>st</sup> March, 1999, referred to as annexure “BM4” hereinbefore, is therein referred to as a rascal”.*

[10] It was further pleaded that as a result of the alleged defamation, the defendants were liable to pay Plaintiff the sum of E500, 000.00 as damages. Consequently the said sum was claimed from the Defendants together with costs.

[11] In their plea, the Defendants denied that the articles as published were false, malicious and defamatory as alleged. In fact it was contended at paragraph 4 of the plea that the words complained of were not wrongful and defamatory of the Plaintiff, because in the context of the articles, the words were in essence true, they were in the public interest and in so far as some of them were expressions of opinion they constituted fair comment in a matter of public interest, and the facts upon which the said comments are based were in essence true. It was therefore denied that the Defendants were liable to pay Plaintiff the amounts claimed.

[12] When led to prove his case, the plaintiff testified and said that he was a businessman of Manzini and the Plaintiff in the proceedings. He had instituted these proceedings against the Defendants complaining of the

articles mentioned in the foregoing paragraphs, which he said were defamatory of him. He contended that the allegations contained in the said articles were false and malicious. At the time of the publication of the said articles he said he was both a prominent tennis player and a businessman who was running two Sneakers Shops – one at the Swazi Plaza in Mbabane and the other one at Tiger City Manzini. These shops, he said, failed and had to close down because of the bad publicity he received from the media including from the articles referred to above which were published by the defendants, who had also published other allegedly defamatory articles of him.

- [13] Contending that the effect or meaning of the said articles in their totality was that he was dishonest and untrustworthy, he denied that he was so, and claimed there was no basis for the said allegations against him. Although it was claimed that he had cheated or conned members of the public of their money, which he allegedly used to establish the shops referred to above, he denied this. Even though the allegations were made to the effect that he had cheated or conned the members of the public through allegedly raising funds for a tournament in Australia, and that although the funds were secured for the said tournament including accommodation whilst there, he had ended up saving the money meant for the latter (accommodation), choosing to sleep in a tent due to his love

for money. He had also allegedly cheated and conned members of the public, through embarking on a broad-scale raffle draw competition under the guise that the members of the public who purchased tickets were to win certain prizes, which were all geared towards raising funds for a training he was to attend at a Tennis academy in the United States of America under one Nic Boloteli, a prominent tennis player of the time. He denied cheating or conning members of the public through the raffle draw or any other venture. He also denied being disruptive in the operations of the Swaziland national Tennis Association (SNTA) and the other specific allegations which go with the alleged disruptive behavior in the Swaziland National Tennis Association.

- [14] Giving his side of the story to the allegations, he said whilst being driven by the love and passion he had for the sport of tennis, coupled with the desire to become one of its greatest players, or words to that effect, he had aspired to join a tennis academy for training in the United States of America, called the Nic Boloteli Tennis Academy or School. To have this aspiration fulfilled, he had decided to embark on a fundraising drive. This drive was to involve the raising of funds through the selling of tickets with the successful or lucky members of the public winning certain prizes which were to be advertised. The whole competition was to be called a raffle draw.

[15] The prizes to be won included a motor vehicle called a Nissan Sentra Sedan; a holiday or dinner fully paid for a number of days in one or so of the major five hotels in the country; grocery vouchers from certain shops as well as lunch vouchers from certain Restaurants or food outlets.

[16] No doubt inspired by the ambitious nature of the competition he had intended to stage, he said he had engaged auditors from Ernest and Young Audit Firm to be responsible or to manage the exercise. They had, out of being impressed by the brilliance of the idea, he says, agreed to his request resulting in a banking account being opened with Standard Bank Swaziland, under the name Nic Boloteli Trust Fund. The signatories to this account, he says, were him and officers from the Ernest and Young Audit Firm whose identities were however not disclosed.

[17] He had also approached a company which was in the business of selling cars, called Tracar based in Manzini where he had engaged its Managing Director of the time known as a Mr. Smith, whom he requested to donate a Nissan Sentra Sedan to his conceived competition as mentioned above. He said that although Mr. Smith had declined to out-out donate the Nissan Sentra Sedan, he had, out of admiration for, and understanding the purpose of, the conceived competition, agreed to have the vehicle sold to

him at cost which was however to be paid for through the proceeds from the sale of the raffle tickets.

[18] He also testified having engaged all the other companies who were requested to take part in the competition and after agreements were reached, he had gone to Inter Agencies Printers in Manzini to design and print for him the advert banners for the competition. He had also specifically met the Managing Director of the Swazi Observer newspaper who had agreed to publish free of charge and for 50 times, the adverts about the competition.

[19] Although many tickets were meant for sale, they did not sell as projected which made them fail to record what he termed a break even point. Means to stimulate the sale, which included the postponement of the raffle draw date, did not help. After it became clear that this idea had failed, the Plaintiff contends that he approached his auditors for cancellation of the entire exercise. Indeed a Public Notice cancelling the competition was published in the Swazi Observer Newspaper. This Notice also called for those who had purchased some tickets to come forward for a refund of their monies. He said about E3000.00 worth of tickets had been sold and all those who responded to the Notice by coming up to collect their ticket-purchase refunds were refunded except



for a few, who were owed less than E1000.00 who he said never showed up to collect their refunds. He said the amounts concerned were kept in the Trust Account of his previous attorneys where he believed it remained to date. I must say that the notice concerned was displayed in court and it was common cause that same had been published in the press.

[20] The cancellation of the raffle meant that no prizes were to be won and in fact signalled the end of the competition. According to the Plaintiff there was not a single member of the public who came forward to legitimately claim her ticket sale refund could not be refunded his or her money. From my observation in court, the defendants did not allege the contrary nor was any evidence contradicting his testimony produced.

[21] On the incident of raising funds to attend a tennis tournament in Australia the Plaintiff testified that he became aware of a tournament meant to take place in Australia for four weeks, with one week being spent at Canberra and the other three weeks in Melbourne. Having called one of the officers responsible for the tournament's organization, who had assured him about his being welcome including all the pros and cons of it, including issues of who the attendees will be, accommodation and meals, he had approached a company known as Engen Swaziland and asked for donations in the form of a return air ticket to Australia to attend the said

tournament. Engen Swaziland, he said agreed to sponsor him with the said air ticket.

[22] This tournament, he said he had attended in his personal capacity and not as a formal representative of this country. Other than the air ticket, he had received no further amounts from any other source as sponsorship towards the tournament, be it for accommodation or meals. He testified further that he had personally arranged a credit card for himself with Standard bank which he says came in handy in enabling him meet some of his needs. Otherwise for accommodation, he had, out of lack of funds, arranged for a tent which he carried with him and would pitch it up during the night and sleep there. He said he was not the only one who did this as several other players did the same given that most of the attendees were from some overseas countries. There was otherwise no amount received by him for accommodation which he tried to save for later use elsewhere. Again no evidence indicating the contrary was led in court.

[23] Concerning how he had come to operate sports shop in Mbabane and Manzini he said while at O.R. Thambo International Airport in Johannesburg on his way to the Australian Tournament referred to above, and while in the company of his friends, they had gone in to a Sneakers Shop situate at the said airport. Whilst there he saw a business

opportunity, to sell the sport wares or clothes sold in that shop. He engaged the person in charge who he informed about his idea. Although the said person was impressed with his ideas, he says he could tell he was not being taken seriously. He had however advised him he was going to return.

[24] On his way back from Australia, he once again went into the said shop and met the manager he had previously met and revived his desire to do business with them. Having noted the seriousness in what they were discussing; the manager immediately wrote to the Nike, Reebok and Sneakers Head Offices in Durban. They responded by inviting him to come through to Durban for discussion. When he eventually got there an agreement was concluded whereupon he was given a business opportunity to sell Nike, Reebok and Sneakers. He was given a startup of E50, 000.00 by Nike, E50, 000.00 by Reebok and E25, 000.00 by Sneakers. Because of this, he managed to establish the shops in question without having paid any cash let alone having used money generated from the failed fundraising drive. He said the shops he had established in Mbabane and Manzini were forced to close down as a result of the bad publicity he received from the Times of Swaziland, particularly the articles referred to. It should be mentioned that the Defendants are either employees of the said Newspaper or owners of it.

[25] The Plaintiff denied having caused disruptions in the SNTA as alleged. He said he had raised what he termed genuine issues of accountability with the Executive of the SNTA. At some stage he said he had raised issues about the cheques of the organization which were being signed by one individual only which he said was irregular. At some stage he said he had taken certain cheques he had suspected of having been fraudulently issued or paid to the Anti-Corruption Commission for investigations. He suggested that the vitriolic attacks he received from the Times of Swaziland Newspaper were an answer to his consistent call for accountability in the organization, including ideas he said he had put forth for the growth of the sport in Swaziland.

[26] He said the effect of the bad publicity did not end with the closure of his shop but continued to other spheres of his life as can be seen from a certain Trucking Business site he had tried to establish at Elangeni area, which was bombed resulting in him having to abandon it. This he associated with the bad publicity because he said he overheard one of the members of the public saying he should not be allowed to settle there as he was reportedly untrustworthy and was using the proceeds of the failed fundraising drive to establish the business there.

[27] Plaintiff went on to testify that he had been adversely affected by the articles in question which were false and had defamed him. He told this court that as a result of the defamation he was suing the Defendants for damages in the sum of E500, 000.00 which he said was a fair amount to claim in his circumstances.

[28] The Plaintiff was cross-examined at length by Mr. Flyn representing the Defendants. The nub of the cross-examination was to try and show him as an untrustworthy person, in so far as he had purported to run a fundraising drive and put up certain prizes such as the Nissan Sentra motor vehicle and the weekend retreats or visits at the Hotels when he had neither such car nor the funds to sustain the other prizes. It was thus put to him that he was untrustworthy and that the articles in question had not defamed him, but had merely exposed the truth about him. It was further put to him that he was indeed an undesirable element in the SNTA as he was disruptive to its operations. This disruption it was put to him was manifested when he presented a petition against the Executive to which he was a member including taking certain cheques to the Anti-Corruption without having discussed them with his fellow Executive Members of the SNTA. It was further put to him that he lacked credibility in his testimony because at one stage, he said all those that had purchased the raffle tickets had been refunded but when cross-examined

he turned around to say there was a remainder of a sum of less than E1000.00 whose whereabouts he said he did not know except to suggest it was left with his erstwhile attorneys. His credibility, it was put to him, was further destroyed by his firstly denying to have taken part in the disciplinary inquiry held against him only to turn around later to say he could not remember. It was put to him, that no one could ever forget having taken part in a disciplinary inquiry if he did attend one. The Plaintiff maintained his version including challenging that the Defendants could not produce any contrary evidence to that which he had presented before court.

[29] At the close of the Plaintiff's case, which had only one witness, the Plaintiff himself; the Defence called only one witness, namely; Mr. Zwelethu Jele who is an attorney of this court. I must mention from the onset that Mr. Jele's testimony did not counter the version put forward by the Plaintiff pound for pound as regards the fraud allegations, particularly as regards the correctness or otherwise of most of the allegations forming the basis of the alleged defamation except perhaps on one aspect; namely the alleged disruptions of the operations of the SNTA by Plaintiff including the tenuous relationship between the two parties.

[30] I therefore noted that whereas all sort of expletives were used to describe the Plaintiff such as his allegedly being a rascal, a cheat, a conman and one who took money from members of the public under the guise that he was putting up a competition, but took the money for his personal use, and in particular to open two sports shops in Mbabane and Manzini, when the competition could not be finalized, and that he failed to refund the people their money; as well as allegations that he obtained sponsorships for a tournament in Australia which included his accommodation only for him to end up sleeping in a tent to save the accommodation money for himself owing to his love of money; there was completely no reaction to the case put up by the Plaintiff explaining what in reality happened. In particular he denied ever cheating or coning anyone or using the money collected as proceeds from ticket sales to open sports shops in Manzini and Mbabane. He also denied having at any stage obtained a sponsorship for accommodation during the tournament in Australia. He explained having put up a notice to refund those who wanted to be so refunded following the cancellation of the raffle draw. He had gone on to actually refund those who came forward to claim their refunds. Plaintiff had also explained where he had obtained the resources to establish his shops from. All the explanations were not contradicted by any evidence in court. The reality is that his case in a way on how he was allegedly defamed went undisputed on such material aspects.

[31] Instead Mr. Jele's testimony was based more on what I observed to be a disciplinary inquiry, which he however preferred to call an arbitration. To conduct it he said he was engaged by the Swaziland Olympic and Commonwealth Games Association to arbitrate between the Plaintiff and the SNTA. As observed below I could not see the dispute being arbitrated upon than I did a disciplinary hearing at which the Plaintiff was facing certain accusations. If my observations are correct, it was of concern that such an exercise had to be sanctioned by or was at the instance of a body to which the Plaintiff was neither a member nor an employee.

[32] According to Mr. Jele, both Mr. Boycey Magongo and the SNTA submitted to his arbitration. There was however no independent proof of this assertion as no record was produced. All I can see is that there had been levelled certain serious allegations against Mr. Magongo by the Swaziland Olympic and Commonwealth which included the allegations that Mr. Magongo had without authority opened an account in the name of the SNTA with Standard Bank Manzini and gone on to without authority, transfer a sum of E5000.00 from the SNTA's normal account into the one he had opened. He was also accused of having, whilst acting without authority, changed the post box keys and keeping the new keys for himself so that he could have exclusive control of the SNTA's post



box. He was also accused of collecting the SNTA's bank statements from Standard Bank without authority and keeping same for his own. There were also accusations of him having made false and damaging allegations about the SNTA to the International Tennis Federation (ITF) without first disclosing such allegations to the SNTA). He was further alleged to have made false statements about the SNTA to the media thus bringing the said organization into disrepute. The last two allegations were according to Mr. Jele not pursued and I see no reason to mention them herein.

[33] The upshot of Mr, Jele's testimony was that on all the above allegations, Mr. Magongo had admitted them except that he had sought to justify them. He had according to Mr. Jele admitted having opened the account without authority but said it was for fundraising purposes which was beneficial to the organization and that the E5000.00 transferred from the main account was still there and had not been used. On the issue of changing the Post Office Box locks, it was said that again Mr. Magongo had admitted doing same claiming to have done it for purposes of investigating the affairs of the SNTA. The same thing applied to the collection of bank statements from Standard bank. Although no evidence of submitting allegations or furnishing false information to the I.T.F. was led, it was contended that Mr. Magongo had admitted this one as well. It

was then recommended that Mr. Magongo be suspended for a period of one year from the activities of the SNTA.

[34] It was put to Mr. Jele under cross-examination that the Plaintiff had not attended that inquiry or arbitration and that in fact no such arbitration as having been handled at the offices of Robinson Bertram was ever attended by him. Again the allegations said to have found the basis of the arbitration had not been put to the Plaintiff at the time he gave evidence and no explanation was ever given by Mr. Flynn on why that was the case. Mr. Jele had however maintained his position that Mr. Magongo had attended the arbitration and admitted the allegations levelled against him. It was put to Mr. Jele as well that what he was saying could not be confirmed anywhere as there was no record of proceedings recording exactly what transpired including what was said by each participant in the alleged arbitration. Whilst conceding that the record of proceedings was not there, Mr. Jele sought to maintain his position saying he had recorded in his decision a summary of what transpired.

I however do not think that Mr. Jele's ruling or decision, which only confirms his say so, can realistically be taken to be proof that indeed an arbitration was conducted between the two and that it was attended by the Plaintiff. I have already said that the difficulty is not only the absence of

the record but also the failure to put what had allegedly happened thereat to the Plaintiff at the time he gave his evidence for him to react thereto. This suggests an afterthought whose fate is well documented in law; which is its rejection.

[35] A certain bundle of documents was presented and handed up to court as forming the defence case. These comprised a certain document prepared on the Letterheads of the Swaziland National tennis Association, bearing the date of the 17<sup>th</sup> January 1999 and titled Press Statement. This document had first been presented to the plaintiff at the time he was under cross-examination. It was suggested to him that it contained facts upon which the articles complained of were based. It merits mention that the plaintiff disputed that, maintaining that it could not have been the case given that it was prepared after some of the articles complained of had already been published. He further denied the alleged Press Statement having ever been published. I only observed that no proof of its publication either in the Times of Swaziland itself or the other local daily Newspaper was produced. In fact there was no proof of its publication in any other document.

[36] The thrust of the document which presented itself as a Press Release or Statement by the SNTA was to explain the relationship between the

SNTA and the Plaintiff. The document was a four page long one. It sought to explain why Mr. Magongo was suspended from the SNTA, including giving an assurance about the commitment of the SNTA to develop and grow the sport of tennis in Swaziland. It also recommitted the executive's stance in upholding the constitution of the SNTA. It further revealed what it called Mr. Magongo's wrongs against the SNTA, such as his having changed postal locks and purported to open offices for the SNTA in Manzini, without authority.

[37] The document further mentioned that Mr. Magongo had prepared several petitions against the Executive of the SNTA and also alleged that Mr. Magongo had obtained monies from the general public through a raffle draw where a Nissan Sedan Sentra was to be the first prize. It alleged further that this raffle draw however, never got to its final stages because there were no prizes after all even though Mr. Magongo got the money. It alleged that although this raffle draw or fundraising was undertaken on the pretext that Mr. Boycey Magongo was to attend a training Academy in Florida, he never went there but instead he had toured Australia using what it termed fraudulently obtained funds.

[38] It also alleged that although Boycey Magongo had, through what it referred to as his Swazi Observer friend, one Sifiso Dhlamini, undertaken

to refund those who purchased tickets for the raffle draw, that was never done according to the document.

[39] It was alleged that this document has on its face ‘facts’ which justified the publication of the articles complained of as a fair comment thereto. In my view there are glaring anomalies with the said document. Firstly no one has owned up to it as its author and no explanation was given why that was the case. Furthermore no witness handed it into court so as to explain its origins and to vouch that its contents are true and correct. It therefore can hardly escape the hearsay rule in my view as regards the correctness of its contents. The fate of such documents is now settled in law, being that its hearsay contents ought to be rejected. Certainly it is for this reason it in my view could not realistically be taken to have formed the basis of the articles complained of in this matter. Indeed no evidence other than the submissions by Mr. Flynn was led by the authors of the articles confirming that they had written the articles complained of as comments to the ‘facts’ supposedly revealed in the said document. The Plaintiff’s counsel has gone so far as to label the document in question a fabrication. I do not find it germane to the resolution of this matter for me to determine such allegations or contentions save to say that, it suffices for me to refer to its contents as hearsay which warrants that it be disregarded for purposes of this matter as there is no proof its

contents amount to 'facts' as alleged. Furthermore in view of its alleged date of preparation it is not convincing to say it formed the basis of the articles as mere comments thereto.

[40] On the documents by Mr. Jele, that is the decision of the exercise conducted by him, to which he referred to as an arbitration, I have already observed that there is no record of the proceedings themselves, indicating where and when it was held including who was in attendance as well as what was said by who. It complicates things for the defence that Mr. Magongo denies ever taking part in the said exercise which manifests a huge dispute. There was however no material placed before me so as to enable me decide same in the Defendants' favour as the proponents of that particular assertion. Even if I have to be persuaded to accept that there was such an exercise conducted, it seems to me that there are nonetheless fundamental problems with the nature or colour of the exercise itself, particularly its fairness.

[41] While Mr. Jele wants to call it an arbitration exercise, I have already observed that it was unclear what dispute; it is that was being arbitrated because in reality the exercise resembled a disciplinary process conducted against the Plaintiff as a result of certain allegations or accusations made against him. Of course a fundamental problem with a disciplinary

process in the circumstances would be that it was conducted by a non-employer nor by an organization to which the Plaintiff affiliated which called for an explanation or clarification of the basis for same as it would be unheard of that a non-employee or non-member would be disciplined by a non-employer or an organization to which he was a non-member. Further complications on the exercise are with regards its observations of the rules of natural justice particularly the Audi Alteram Partem rule or the rule as regards a fair hearing as there is no indication that that important rule was observed on the face of the document.

[42] We are for instance not told that the exercise was preceded by charges or allegations timesously given to the Plaintiff as the one to be obviously disciplined, for him to prepare himself including him being afforded an opportunity to be able to face his accusers and cross-examine the witnesses who gave testimony against him. This was necessary to do in order to test the correctness of what was said against him. The same thing applies to his being given the opportunity to bring his own witnesses including producing whatever evidence he had in support of his version. There is no doubt that no credence can be placed on a result or decision that flowed from such an obviously flawed process. It therefore cannot be enough in my view to say that the Plaintiff admitted the

allegations against him, particularly where he disputes such an admission and there is no record to back up same.

[43] The position of the defence is further complicated by the fact that the issues dealt with in the exercise referred to above are not covered anywhere in the articles complained of, with the exception of, perhaps, the tenuous relationship between the Plaintiff and the SNTA, which itself can arguably amount to a disruption of the affairs of the SNTA by the Plaintiff. Perhaps had the exercise been handled fairly, with the Plaintiff being accorded his full rights by a competent body to enquire into the propriety of his conduct, this issue would have been properly resolved.

[44] Having said all I have above, it is clear that there was no evidence whatsoever before me to dispute that the Plaintiff had not misrepresented to members of the public that he was raising funds to go for training at the Nic Boloteli Tennis Academy in the United States of America and that he had not taken the money raised through ticket sales for the raffle draw intended at generating funds to enable him attend the said training Academy and used same to establish sports shops in Mbabane and Manzini. Whereas the ambitious fundraising exercise he had commenced failed, there is no evidence that it was a trickery from the onset or later. I am convinced that when considering the reputable institutions who



supported it when it was established including what was done when its failure became apparent, the exercise was a genuine one aimed at raising the necessary funding for Plaintiff to eventually satisfy his ambition of attending the Academy he had desired to attend in order for him to become the Tennis Player of note he had desired to become. I have no doubt that were the exercise anything else all the role players who included, by standards, some of Swaziland's big and reputable businesses, would not have associated their precious names with a fraudulent exercise from the onset.

[45] There is also no evidence to contradict that after the project or fundraising exercise had failed, there was issued a public Notice cancelling the exercise and calling upon those that had purchased the tickets to claim a refund of their monies. There was also no evidence to led contradict that indeed those that claimed their refunds were paid same. This is despite the Newspaper articles complained of making it appear like a fact that members of the public were not refunded their money despite a promise made to that effect. The failure by the Defendants' Newspaper to acknowledge at least this obvious fact about the Notice cancelling the raffle draw and calling upon the interested members publicly to claim refunds is in my view indication of malice on the Defendant's part, particularly when considering heir persistence in the face of this notice

and apology to say that the Plaintiff used the proceeds of the ticket sales to establish two shops in Manzini and Mbabane and to contend he never refunded the ticket purchasers without a basis.

[46] Furtherstill there was no evidence led by the defence to prove that the proceeds from the ticket sales were actually used by the Plaintiff to open his two sport shops at the Swazi Plaza Mbabane and Tiger City, Manzini. There was not even evidence to establish a basis for the suspicion that the Plaintiff had used the proceeds from the tickets-sales to establish the said shops. This is despite the bare assertions to the effect that Plaintiff had so used the proceeds as alleged by Defendants in the articles complained of, particularly in annexure BM3, where the Plaintiff was said to have “conned” the people who purchased the tickets as well as where he is referred to as a “cheat” for allegedly having stolen the money from them. His fundraising exercise was in my view unjustifiably referred to as ‘trickery’ just as he was unjustifiably said to have ‘swindled’ members of the public their money.

[47] Although in the other articles it is said that he is suspected to have used the money to establish two sports shops, for instance “BM2” and “BM4”, it is clear no basis for the suspicion are put forth. It complicates it further that the side of the Plaintiff was never sought before publishing the said

articles or even making the said allegations. Our law on defamation is settled on what the failure to obtain the Plaintiff's side before publishing a defamatory article is. That is, it leads to the drawing of an adverse inference as it is taken to be unreasonable. See in this regard the cases of ***Lange vs Australian Broadcasting Corporation (1997) 189 CLR520*** and that of ***National media Ltd and Others vs Bogoshi 1998 (4) SA 1196 (SCA)*** where the position was put in the following words:

*“The Defendants conduct will not be reasonable unless the defendant has sought a response from the person defamed and published the response made (if any) except in cases where the seeking or publication of a response was not practicable or it was unnecessary to give the Plaintiff an opportunity to respond”.*

[48] There was also no evidence supporting the assertion made in the articles complained of, for example “BM3” to the effect that the Plaintiff had collected money from sponsorships with the aim of going to represent the country in a tournament in Australia. It had further been alleged that whereas he had allegedly claimed the money was to be used for accommodation, when he arrived in Australia he had slept in a tent in a bid to save the money, owing to his love for it. The evidence before me which was not contradicted was that the Plaintiff had, whilst acting in his

personal capacity, sought and obtained a return air ticket from Engen Swaziland. He had not been given any sponsorship for accommodation and meals which are items he was to personally take care of, hence his decision to bring with him there his tent in which he slept. There was no money to save and he did not save any therefore in terms of the evidence led which stood uncontroverted.

[49] There was further no evidence to support the assertions made about him in annexure “BM4”; where it is said that the Plaintiff “deceived the nation by claiming there was a bakkie to be won and raffle tickets were out and sold to the public for a car that never was”. It is further asserted without any supporting evidence being produced in court that; “He never mentioned the car again and the public were swindled their money and the rest is history”. I say there is no evidence supporting the assertions made in these statements, because evidence, which I find, was credible and sensible, was given by the Plaintiff without being controverted or contradicted to the effect that the raffle draw he had organized had as a first prize a Nissan Sentra and not a bakkie as alleged in the article. I do not think that from the explanations given by the Plaintiff, one can even talk of deception being extended to the members of the public because there was no evidence from the defendants to indicate the contrary. While the fundraising exercise by the Plaintiff may have been ambitious,

I have no doubt it was far from being deceitful. The explanation given the Plaintiff on this area was in my view sound reasonable and credible.

[50] It is also not true that the car, (I assume that by the car reference is made to the Nissan Sentra, which was the only one mentioned in the fundraising exercise), was never mentioned again and the public was swindled their money. The evidence before court which is also to some extent supported by what is said in “BM2”, is that a public notice comprising an apology was made to the public with a promise to refund the said members their money. The evidence which could not be contradicted is that those members of the public who had purchased some tickets and had also come forward to claim their monies were indeed paid. No one has come to court to say he was, contrary to the notice and assertions by the Plaintiff, not paid or refunded his money.

[51] I have no doubt therefore that what was stated in the articles complained of, and as paraphrased or cited verbatim above and as recorded from paragraphs 44-50 hereinabove, is false as concerns the Plaintiff and is not supported by the evidence given on record.

[52] It is arguable whether there is any credence in the assertions that blame the Plaintiff for disrupting the affairs of the Tennis Association. Owing

to the manner he handled himself in criticizing the SNTA, it may have justifiably drawn strong criticism against him. I doubt very much that this aspect of the matter can be said to be defamatory of him. It may well be that the Plaintiff would have had some of the issues complained of firstly addressed in a meeting as opposed to finding its way to the media. In any event his complaint as at paragraph 6 of the Particulars of Claim is that the articles complained of (including article BM1, which strongly criticizes him in relation to his alleged disruptive behaviour) are wrongful and defamatory of Plaintiff because they were understood by the readers to mean that he was dishonest. It was not shown in evidence how for instance the contents of BM1 (in relation to his relationship with the SNTA) implied that Plaintiff was dishonest. I myself find it very difficult to draw this inference. It may be that, strong critical language was used against him but I am unable to find nor have I been shown any defamatory aspect in that article particularly an aspect that suggests or shows the Plaintiff was dishonest in his dealings with the SNTA as alleged by.

[53] The same thing, as already indicated above, cannot be said however of the other articles in so far as they allege or suggest that the Plaintiff embarked upon a deceptive fundraising exercise to swindle members of the public by saying that certain prizes were to be won, but instead ended

up taking their money without refunding them and used it to establish two sport shops in Mbabane and Manzini. These assertions are the common thread that permeates all these three other articles. Of course in some of the said articles he was referred to as a rascal and as a cheat who conned members of the public their money. I have already indicated there was no evidence to support these conclusions or assertions. The same thing applies with regards to the assertions that the Plaintiff had again deceived sponsors by asking for and obtaining sponsorships to attend a certain tournament in Australia, only to save the monies meant for accommodation by sleeping in a tent because of his deep love for money.

- [54] Defamation has been defined as the unlawful and intentional publication of a defamatory matter (by words or conduct) referring to the Plaintiff which caused his reputation to be impaired. See in this regard *Inkhosatana Gelane Simelane and Africa Echo (PTY) LTD and Two Others High Court Case No. 2362/09 [2013]* and *The Times of Swaziland and Another vs Albert Shabangu Civil Appeal Case No. 30/2006* (unreported at page 10) as well as an extract from Burchell's, The Law of Defamation in South Africa at page 35. One of the questions to answer in this judgment is whether the articles concerned, at least those found to be defamatory, do impair the Plaintiff's reputation. I have no doubt that to falsely allege either directly or by implication that someone

is dishonest or untrustworthy does impair that person's reputation. I have already found that the articles in question did just that as their natural meaning was to impute dishonesty and untrustworthiness on the part of the Plaintiff.

[55] It has been said in previous judgments of this court and the Supreme Court that the starting point in defamatory matters is the ascertainment whether or not the articles complained of are defamatory of the Plaintiff. This ascertainment could either find that the words in question are defamatory per se or are defamatory as a result of an innuendo which implies words which on the face of them sound innocent yet because of certain special circumstances known to the readers are rendered defamatory.

[56] I have already determined above that the words complained of in this matter are per se defamatory because of the natural meaning on what they allege. By this I mean they are not defamatory because of an innuendo but they are per se defamatory. To determine whether words are per se defamatory, one considers whether a reasonable man or person of ordinary intelligence understands them to be defamatory in their natural and ordinary meaning. In determining this natural and ordinary meaning, the court must take into account not only what the words expressly say



but also what they imply. See in this regard *Angus Printing and Publishing Co. LTD vs Esselen's Estate 1994 (2) SA 1 (A) at 20 E-G.*

[57] The natural and ordinary meaning of saying that someone is a fraudster who previously defrauded members of the public of monies through the sale of raffle tickets thereby committing theft by false pretences and that the same person used the monies defrauded the members of the public to establish a shop or shops is that, that person is dishonest. The same meaning applies in suggesting that the same person, upon realizing that his fundraising exercise is not working, failed to refund the members of the public their monies despite undertaking to do so. It further means the same thing in my view to say at some stage the same person got a sponsorship or sponsorships to represent the country in a tournament in Australia (which included accommodation) but he ended up saving the money for accommodation for his own benefit, by sleeping in a tent for a week owing to his love for money. This is all the more so where the said allegations are false as was shown to be the case above, in this matter.

[58] In our law once the court finds that the words are per se defamatory and where the same words are admitted, it is justified to find in favour of the Plaintiff, unless the Defendants, who have an array of defences successfully raise them, in which case the Defendants would not be liable

even though the words are per se defamatory. See in this regard The Editor, the *Times of Swaziland and Another vs albert Shabangu Civil Appeal Case No. 30/2006*. It is a fact that the Defendants in this matter raised an array of defences which I mentioned above to include the following:

- that the words, in the context of the articles, are in essence true;
- that the publication of such words was in the public interest, and
- that in so far as any of the said words are expressions of opinion they constitute fair comment on a matter of public interest, and the facts upon which the comment is based are in essence true.

[59] The question to ask at this point is does any of the defences raised by the Defendants succeed? It is true that if any of the said defences succeeds then, the Plaintiff's claim cannot succeed or will have to fail. I have already found that the first article BM1, although expressed in somewhat strong and aggressive language, is not in my view defamatory. I have found it amounts to mere criticism of the Plaintiff and perhaps even a desire by the Defendants that he should not be allowed to continue as a

member of the Tennis Association. Although I cannot necessarily say that the words used are in essence correct, I am convinced, they are, in the context of the articles, an expression of an opinion and perhaps they amount to a fair comment in that particular article.

[60] The same thing however, cannot in my view be said of the other three articles as in some aspect they go beyond what can be said to be fair criticism. I have further found that the material aspects of them as relate to the fundraising exercise, the raffle draw, and how the proceeds therefrom were allegedly used as well as the contention that the said monies were used to establish some sport shops by Plaintiff are clearly false and therefore cannot be said to be in essence correct in the context of the articles. The same thing applies to the contention that the Plaintiff raised sponsorships to represent the country in a tournament in Australia but despite that same was paid for he ended up sleeping in a tent in order to save money for himself because of his love of it. It was similarly not correct to say he had not refunded members of the public who purchased the raffle tickets besides his undertaking to do so. These aspects are in my view false and cannot be said to be in essence true. The position in this regard was put as follows in *National Media Ltd and others vs Bogoshi 1998 (LR) SA 1196 (SCA) at page 1212:-*

*“Ultimately there can be no justification for the publication of untruths and members of the press should not be left with the impression that they have a licence to lower the standards of care which must be observed before a defamatory matter is published in a Newspaper”.*

[61] The position was emphasized and put as follows in ***Independent Newspapers Holdings Ltd vs Walled Suliman, Supreme Court of Appeal of South Africa Case No. 49/2003:-***

*“False and injurious statements cannot enhance self-development. Nor can it be said they lead to healthy participation in the affairs of the community, indeed they are detrimental to the advancement of these values and harmful to the interests of a free and democratic society”.*

[62] It is also unrealistic to say that the articles were based on a certain press statement. I have already rejected that statement on the basis that its contents are hearsay and no evidence was led of who its author was and how it got to be produced in court including the lack of evidence by the authors of the article to say they were influenced by same or that they based their comments thereon. In any event some of the defamatory material contained in the statement was published prior to the said statement and only persisted with in the subsequent ones. Whatever the

situation it is not in dispute that the said articles were published as facts notwithstanding that the Plaintiff's side to the story concerned was not sought. It is imperative for a Newspaper to seek the Plaintiff's side before publishing potentially defamatory material. Failure to do so is said to be unreasonable and would lead to a defence by a Defendant not succeeding. In ***National media Ltd and Others vs Bogoshi 1998 (4) SA 1196 (SA)*** the position was put as follows:-

*“Whether the making of a publication was reasonable must depend upon the circumstances of the case. But as a general rule, a Defendant's conduct in publishing material giving rise to a defamatory imputation will not be reasonable unless the defendant has reasonable grounds for believing that the imputation was true, took proper steps, so as they were reasonably open, to verify the accuracy of the material and did not believe the imputation to be untrue”.*

[63] The court continued as quoted above to say that the conduct will be unreasonable unless the Defendant sought a response from the Plaintiff and published same, except in cases where the seeking or publication of a response was not practicable. The Defendants did not say anything in this regard, cementing the conclusion that the Plaintiff's comment was never sought before the publication complained of was made.

[64] Given that the contents of the articles I have found to be defamatory were found to be false, it cannot be said that they were in the public interest. As quoted above, at paragraphs 61 and 62, false and injurious statements cannot enhance development, but in the contrary they are detrimental to the enhancement of proper values and harmful to the interests of a free and democratic society. I therefore cannot agree that the publication of the words or aspect I found to be false and defamatory can be said to be in the public interest.

[65] I further cannot agree that the words complained of are expressions of opinion, particularly those I found to be defamatory and that they constitute fair comment on a matter of public interest. I have already found that the words concerned were false and not based on any facts. The articles concerned did not express an opinion when they alleged that the Plaintiff had for instance used the proceeds from the failed fundraising exercise to establish a shop or shops. They expressed this as fact. The same thing applied when it was averred that no refunds were made to members of the public who had purchased the raffle tickets and the aspect that the Plaintiff had slept in a tent in Australia because he was saving money as he loved it so much.

[66] Having considered the matter in its entirety, I am convinced that none of the cognisable defences can avail the Defendants. Having already found that the Plaintiff was defamed, I am now required to consider what an appropriate award of damages ought to be in the circumstances of this matter.

[67] The general factors for consideration in the award of damages have been summarized by the courts to be the following:-

- (a) Character and status of the Plaintiff.
- (b) The nature and extent of the publication.
- (c) Nature of imputation (seriousness thereof).
- (d) Probable consequences of the imputation.
- (e) Partial justification.
- (f) Retraction or apology.
- (g) Comparable awards and declining value of the currency.

See in this regard ***Lindifa Mamba and Another vs Vusi Ginindza – High Court Civil Case No. 1354/2000*** as well as ***Sikelela Dlamini vs The Editor of the Nation and Another High Court Case No. 2534/2007***.

[68] The Plaintiff testified that he was a businessman. At the time of the publication of the articles complained of which is unfortunately more than 10 years ago, he said he was a prominent Tennis Player over and above being a businessman. The defamatory allegations were published repeatedly according to him and from what we can see on these articles produced in court. The articles depicted the Plaintiff as a dishonest and untrustworthy person which I have no doubt is publication of a serious nature; particularly if directed against a businessman. In his evidence the Plaintiff did testify that the effect of the said publication was the closure of his shops and the failure of a subsequent business venture he tried to establish. The closure of his business came about because his suppliers from Nike, Reebok and Sneakers had expressed concern about the nature of the publicity he was attracting. Eventually his business failed as a result, he said. I do not find any justification on the part of the Defendants to publish that the Defendant was dishonest and untrustworthy particularly when considering the explanations on why he conducted the exercise in the manner, he had done. I have no hesitation had his side to the allegations been sought prior to publication, I am sure the publication would not have been in the manner it was in.



[69] Mr. Flyn sought to suggest in his submissions that the Plaintiff lacked credibility because he had lied and said he had refunded all those who had purchased the tickets before admitting that there was a remainder which remained in the trust account of his attorneys. I do not agree with Mr. Flyn. I agree with the Plaintiff that given that the matter had happened a longtime ago there would be lapses on accuracies. I did not find any contradictions or inconsistencies on material areas or aspects of the matter so as to justify an adverse finding against the Plaintiff.

[70] If anything I note that there has never been an apology extended towards the Plaintiff despite the Defendants being aware that there was an apology by the Plaintiff himself on the failed raffle draw and that he had called upon those that had purchased the raffle draw tickets to claim a refund and no one who had claimed was shown not to have been paid. I say there was this awareness calling for an apology because it is stated ex-facie "BM2" published in the Newspaper that there had been this apology and a call for a refund. For the Defendants to have not paid attention to an aspect they had themselves published earlier on is in my view an indicator of recklessness. It was also not reasonable for the Defendants not to ascertain at least from the Plaintiff in person as to what had actually happened including whether or not a refund had been made, but to jump into a conclusion that there had been no refund.

[71] Failure to confirm a story with a Plaintiff is viewed seriously in defamation matters not only as proof of the unreasonableness of the publication but as proof of malice as well. In ***Chinamasa v Jongwe Printing and Publishing (PTY) LTD and Another 1994 (1) ZLR 133 (A)*** at 167-168, the position was put as follows by Bartlet J:-

*“...failure to investigate or to get comment from the person who is the subject of a story is indicative of malice”.*

[72] In the matter at hand there was a total disregard of the need to investigate or to engage the Plaintiff so as to ascertain his side of the story. On the above cited authority; such is an indicator of malice. The position is now settled that where malice is established, the award of damages ought to be higher than your normal ones.

[73] I have therefore considered all the circumstances of the matter including, as stated above, the position and status of the Plaintiff, several previous judgments on awards as well as the fact that this is an old matter whose failure to be prosecuted timeously cannot be attributed to any of the parties rather than perhaps the usual backlog of cases which cannot be used against anyone of the parties. I have also had to consider the fact that according to the Plaintiff he had to lose his business as his sports shops had to close down owing to the bad publicity he continuously received from the Defendant's Newspaper.

I am further convinced that the articles were reckless and repetitive in their unfounded accusation of the Plaintiff.

[74] Having considered all the circumstances and aspects of the matter, I am convinced that an award of damages in the sum of E85, 000.00 would be an appropriate one in this matter.

[75] Consequently, and for the removal of doubt, the Plaintiff's claim succeeds and the Defendants be and are hereby ordered to pay him a sum of E85, 000.00 as damages together with the costs of suit which are fixed at the ordinary scale.

**Dated at Mbabane on this the 11<sup>th</sup> day of February 2015**

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**N. J. HLOPHE  
JUDGE - HIGH COURT**