



IN THE HIGH COURT OF ESWATINI

Held at Mbabane

Case No.:1547/2007

In the matter between

NSIBANDE GIRLIE THULIE

PLAINTIFF

AND

SWAZILAND ELECTRICITY BOARD

DEFENDANT

Neutral Citation: *Nsibande Girlie Thulie vs Swaziland Electricity Board*
(1547/2007) [2020] SZHC 108 (8th June 2020)

Coram: Hlophe J.

For the Plaintiff: Mr Motsa

For the Defendant: Mr Z. Shabangu

Date Judgement Delivered: 08th June 2020

Summary

Action Proceedings – Defamation – Assessment of Damages.

JUDGMENT

- [1] On the 6th April 2017, I handed down a judgement on liability in the above matter in terms of which I found the Defendant liable to the Plaintiff for defamation. I directed in the same judgement that the parties try and agree on the quantum of damages and further that they should only revert to Court for a judgement on the quantum if they were unable to amicably agree.
- [2] The matter disappeared for a considerable period and I had believed that it had been settled when I received a notice of set down indicating that it was being set down for this court to determine the quantum of damages as it had initially directed. Upon inquiry from both counsel why it had to take such

an inordinate period to decide on the question whether or not the matter was being amicably resolved or required involvement of the court, I was advised that so much time had been taken because before any attempt to engage amicably between the parties on the central question the Defendant had taken the judgement on liability to the Supreme Court and had only attempted to engage its counterpart after the said court had declined the appeal, directing that since this court had not pronounced itself on the quantum, then the matter was not yet ripe for hearing by the Supreme Court and that there had to be a determination of that question first.

[3] After the matter had been set down, it could not be proceeded with because the then Plaintiff's attorney, Mr Mandla Mkhwanazi (may his soul rest in peace), would not attend court owing to what I was to later learn was his unfortunate state of health which was unyielding. Infact this carried on for some time until his eventual passing on.

[4] The matter eventually proceeded for the determination of the question on the quantum of damages on the 26th November 2019. This was after the appointment of the new attorney for the Plaintiff in Mr Motsa.

[5] In the judgement on liability I had found the defamation to have occurred on at least two occasions; namely at the Plaintiff's homestead and business site at Mahlangatsha area as well as at the Malkerns depo of the Defendant. On each one of the said occasions the Plaintiff had in effect been accused of having illegally connected to the Defendant's electricity supply lines and thus to have unlawfully helped herself to the electricity. Angry and even unpalatable words were found to have been uttered in the process to the Plaintiff which included her being referred to as an old thief. As it later turned out the person who had actually done the unlawful connection on to the Defendant's electric supply lines was not the Plaintiff but a neighbour of hers, when she had been branded as a dishonest person.

[6] At or near the Plaintiff's homestead, which comprised the first instance of the defamation, the Plaintiff's business was disrupted as her electric supply

was cut off. The carcass of her pork which had been contained in a refrigerator went bad. Otherwise a specific claim for the loss of business in that regard was made and was not realistically opposed or defended. That claim should therefore be granted as prayed for.

[7] The Second occasion of the defamation was occasioned by the complete carelessness of the Defendant's employees whilst acting within the course and scope of their employment. Notwithstanding that this was the next day to the first encounter, the Defendants had still not bothered to cross-check their facts. Instead they had gone on to once again accuse plaintiff of being an old thief which they now did in front of an even bigger audience, meaning the publication of the defamation was wider this time.

[8] It merits mention, that whereas in the first publication the audience was very limited, it was mentioned at a place where the Plaintiff was well known as a business person and as an important member of the community – she was a member of a libandla responsible for resolving disputes in that area besides what she described as a faith healer. In the second publication, although it occurred in the presence of a wider audience, the evidence did not suggest

that besides those employees of the Defendant who knew her in their business dealings at her residential area, many of those present there knew her.

[9] The general factors for consideration in the award of damages for defamation have, in previous judgements of this court and the Supreme Court, been listed as the following;

- (a) The nature of the defamatory statements particularly as concerns the seriousness of the allegations made.*
- (b) The nature and extent of the publication.*
- (c) The reputation, character and conduct of the Plaintiff.*
- (d) The motive and conduct of the Defendant in publishing the allegations complained of.*
- (e) Retraction or apology.*
- (f) Comparable awards and the changing value of the currency.*

See in this regard **Lindifa Mamba and Another Vs Vusi Ginindza – High Court Civil Case No.1354/2000; Sikelela Dlamini Vs The Editor of The Nation Magazine And Another, High Court Civil Case No.2534/2007;**

Inkhosatana Gelane Simelane Vs African Echo (PTY) LTD High Court Civil Case No. 2362/2009; Dr Johannes Futhi Dlamini And The Swazi Observer Newspapers t/a The Swazi Observer on Saturday and Others, High Court Civil Case No. 2362/2009.

[10] The position of our law is now settled that to unjustifiably refer to a person as dishonest in the presence of others is defamatory as it has the effect of adversely affecting that person's reputation. In the present matter the Plaintiff was unjustifiably referred to as an old thief and as a person who had unlawfully connected to the defendant's electric lines or as having 'stolen' the defendant's electricity.

[11] I agree that the publication was not widely made, at least not to many people who knew her closely or even knew about her standing in her community. It is however still a factor that she was a respectable member of her community who occupied responsible positions as well as being a respectable business person in that area. The publication of adverse allegations with regards her reputation no doubt cast serious aspersions on her said roles.

[12] Although the publication of the statements complained of may not be said to have been done with a deliberate mission to destroy her reputation, it achieved just that through recklessness or negligence, warranting that the Plaintiff receives redress for the tarnishing of her reputation. I cannot lose sight of the fact that, it was always necessary for the Defendants' employees to cross check their facts in the conduct of their work. I also take into account that no apology was formally extended to the Plaintiff. The nature and gravity of the publication may not have been as intense as a matter where there was a deliberate mission to tarnish her reputation but she still was tarnished.

[13] I have to construe it in the Plaintiff's favour that the publication in this matter is different from that done through the media as concerns its indelibility.

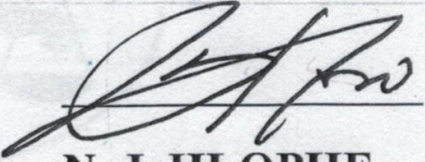
[14] The incident complained of is said to have occurred in December 2006. I am alive to the fact that the awards of the time should be distinguished from those of one who would defame some other person today as that person should be taken to have contemplated the likely consequences of his actions.

[15] I was referred to the South African case of **Mzwanele Manyi vs Mcebo Freedom Dlamini** delivered on the 18th July 2018 by the Northern Gauteng High Court sitting in Pretoria. The analogy here is that like in the present matter the publication was limited to a fewer number of people. Ofcourse those who had become aware of the publication complained of were only members of certain whatsapp groups who had access thereto like in the present matter where those to whom the publication was made were those present at the two places where the defamatory words had been uttered. This factor distinguishes the present matter from those in which the defamatory matter was published via a newspaper publication such as those I was referred to by Mr Motsa which include that of **Sipho Makhabane vs The Weekend Observer (Pty) Ltd And Others High Court Case N0. 1681/2007** and that of **Inkhosatana Gelane Simelane vs African Echo (Pty) Ltd High Court Case No.2362/2009**. In the matter of Mzwanele Manyi referred to above the Plaintiff was awrdded a sum of R50,000.00 (an equivalent of similar Emalangen) unlike in the Sipho Makhabane and the Inkhosatane Gelane Simelane matters where the awards were E300,000.00 and E550,000.00 respectively.

[15] Taking into account all the foregoing factors and in particular the peculiar circumstances of the matter, I am of the view that a sum of E50,000-00 would be an appropriate award of damages in the matter.

[16] Accordingly I make the following order:

1. The Defendant be and is hereby ordered to pay Plaintiff a sum of E50, 000.00 as damages for the defamation complained of.
2. The Defendant be and is hereby ordered to pay Plaintiff the costs of the proceedings.



N. J. HLOPHE
JUDGE – HIGH COURT