

IN THE HIGH COURT OF ESWATINI

JUDGMENT

In the matter between:

Case No. 2012/2012

NGOM'UYAYONA GAMEDZE

Plaintiff

and

THE SWAZI OBSERVER (PTY) LTD

1st Defendant

THULANI THWALA

2nd Defendant

DUMISANI NTIWANE

3rd Defendant

Neutral citation : *Ngom'uyayona Gamedze v The Swazi Observer and 2 Others (1654/2015) [2020] SZHC 271 (16th December, 2022)*

Coram : **M. Dlamini J**

Heard : **30th November, 2022**

Delivered : **16th December, 2022**

Ratio - defamation: *The impugned statement must be read in its context. It is undesirable to read one or few words and ignore the context of the statement. [16]*

Summary: The plaintiff sued out combined summons, claiming the sum of E900 000. 00 together with interest and costs of suit. The *causa* was defamation. The defendants filed a plea, pointing out that the words used were not capable of defamatory meaning to an ordinary reasonable reader. They also raised the pleas of fair comment and public interest.

The Parties

1. The plaintiff is an adult male LiSwati. He resides at Mfabantfu, district of Manzini.
2. The 1st defendant is a newspaper publication, registered as a company in terms of the company laws of the Kingdom. Its principal place of business is situate at Betfusile Street, Mbabane, Hhohho district.
3. The 2nd defendant is an adult male LiSwati. He is employed by the 1st defendant as its editor.

4. The 3rd defendant is an adult male LiSwati. He is the employee of 1st defendant and works as the reporter.

Causa

5. The plaintiff has based his cause of action on defamation of character. He has particularised that the defendants published three (3) articles during the dates of 24th, 26th and 28th April, 2012.
6. The plaintiff referred to three captions as published on the respective dates. These were,
- i) *“Highlanders should stop shifting goal posts.”*
 - ii) *This is an excuse to fire Koki, period.”*
 - iii) *Bulls’ song out of tune.”¹*
7. Highlighting the defamatory article of the 24th April, 2012, the particulars of claim referred to the following passage:

“Instead, Highlanders should be addressing their own problems, which have nothing to do with the tactical aspect of things. The club should

¹ Page 6, para 6

be informing its supporters for instance as to how Lucky Mahlalela found himself sidelined midway through his reign as chairman. Senator Ngomuyayona Gamedze is now back at the helm. This is the same man who had resigned citing unworkable conditions and a busy schedule as the reason for stepping down. I have nothing against Gamedze in his tenure before his unexpected resignation, he had led the Mbabane giants to glory in the Swazi Bank Cup, so I cannot have qualms with his return. It is, however, the division on the team that has been caused by his come back that I am worried about.

*The division of Highlanders is there for everyone to see. From the team's top officials down to the players, there is no unity and no team can win the league championship as a divided lot. Now, it is easy for team supporters to apportion the team's ill to the technical bench but the truth of the matter is that there is more than meets the eye."*²

8. From the above, the plaintiff stated that to an ordinary reader, such passage was understood or suggested that, *"the Plaintiff is dividing the club, sidelining another administrator from the Club, Lucky Mahlalela in that his*

² Pages 7-8, para 8.2 and 8.3

involvement in the team is generally causing division and poor performance of the Club. ”³

9. In as much as the plaintiff stated that the defendants continued to publish a defamatory article on 26th April, 2012, the plaintiff did not reflect the said article or the words in the article which were defamatory of him in his particulars of claim. Nothing further was contended by the plaintiff on how the article of 26th April, 2012 was understood by the ordinary readers as defamatory.
10. In his particulars of claim, the plaintiff then referred to the article of 28th April, 2012. It was authored as the caption: “*Bull song out of Tune.*” That article was understood that, “*The Plaintiff’s return was causing instability in the team inclusive its poor performance.*” Such could be read from the following passages:

“I do not doubt Gamedze’ passion and loyalty to the Mbabane side. However following the latest, I can safely say now that I only respect the man as a politician and elderly citizen of the country but definitely not as a Highlanders boss. Being the senior person he is; Gamedze

³ Above at para 8.4

should have at least waited until the end of the season to make his comeback. What harm would that have done really? As it is now, it is very difficult to ignore comments made by some of team's officials that the man merely wanted to bask in the glory of the Swazi bank Cup.

Gamedze seems to playing right into the hands of his dictators, who are alleging that he has something against the suspended coach, Thabo 'Koki' Vilakati. Or was the fact that Gamedze was not present when Vilakati was unveiled as the manager/coach prompted such a decision.”⁴

11. From the above statement, the plaintiff wrote:

“The above words were read and understood by the members of the public suggesting that, the Plaintiff is not only incompetent as a political and an elderly citizen but also as a football team administrator. The article is further defamatory in that it implies that his return to Mbabane Highlanders was causing disruption and that he has something against Coach Thabo Koki Vilakati.”⁵

⁴ Page 9, paras 9.1.1.1 – 9.1.1.4

⁵ Page 10, para 9.2

12. It was further stated:

*“The Plaintiff was understood to be incompetent in the conduct of his capacity as Chairman of Mbabane Highlanders Football Club, which was causing poor performance of the club and division amongst its administrators. These implications has tarnished Plaintiff’s image, not only as person but as a Senator in the house of Parliament.”*⁶

Plea

13. The defendants denied that the articles were defamatory at all. The words were not capable of being read and understood by an ordinary reader of the newspaper as defamatory. No reader could have ascribed the meaning suggested by the plaintiff.

14. Section 24(1) and (2) of the Constitution protected the defendants. The article was *“a fair comment on a matter of public interest.”*⁷ Further, *“the articles were published by the Defendants in discharge of their duty to inform the public which has a corresponding right to receive the information.”*⁸

15. The defendants also disputed that the plaintiff suffered damages to the tune of E900 000.00.

⁶ Above, para 10.2

⁷ See page 19 para 6.3.2

⁸ Page 19 para 6.3.6

Principles of the law on defamation

16. The requisites of defamation as an *injuriarum* action are well settled. They are: (a) wrongfulness and (b) intentional (c) publication, of (d) defamatory statement (e) concerning plaintiff. The determination of these elements need not follow the sequence outlined herein. However, case law points out that the first port of call in such action is to determine the meaning of the words employed in their ordinary sense. Secondly, ascertain if they are actually defamatory of the plaintiff in their context. Here the enquiry is based on the ordinary reader of the newspaper whose intelligence is average and certainly neither the intelligence of the presiding officer nor an astute reader. As it is often illustrated, for instance, the word 'cook' in its ordinary meaning is not per se defamatory. However, if used in relation to a bookkeeper's work, it might turn out to be defamatory. For example, if one states of a bookkeeper or auditor, "A cooks the books." Such statement could easily be viewed as defamatory of A. In this instance, the law views such statement as an innuendo, namely secondary meaning owing to the circumstance. Such should however not be confused with ordinary or implied meaning of the word.⁹ Where an innuendo is alleged, it must be specifically pleaded. A defendant may raise an exception as a first port of call where he disputes

⁹ Delict "Principles and Cases," Van der Walt Midgley, 2nd Ed., Vol. 1 at page 90 para 75

such meaning (innuendo). The *onus* of establishing the elements of defamation lies with the plaintiff on a balance of probabilities during the trial. The impugned statement must be read in its context. It is undesirable to read one or few words and ignore the context of the statement.

17. On the defence of fair comment, the elements to be ascertained are;
- a) the statement must be one of comment and not fact;
 - b) it must be fair;
 - c) the facts upon which it is based must be true;
 - d) the comment must relate to matters of public interest.¹⁰

Determination

Are the statements complained of defamatory of plaintiff?

Article dated 26th April, 2012

18. I must highlight from the onset that I shall not deal with the article of 26th April, 2012 for the simple reason that in as much as the particulars of claim mentions the title, '*This is an excuse to fire 'Koki', period*' and that plaintiff was so defamed in it, the defamatory words were not specifically captured by the plaintiff in his particulars of claim. In other words, the article and the

¹⁰ Weekend Observer (Pty) Ltd and Two Others v Sipho Makhabane {100/2017} [2018] SZSC 41 (23 October 2018) para 27

specific words reflecting defamation were not referred to in the particulars of claim. The principle of our law that a litigant must make his case in the pleadings stands to be applied in this instance therefore. By failure to refer to the article, more particularly the specific words alleged to be defamatory of the plaintiff, no case is made out on behalf of the plaintiff.

19. The reason for the plaintiff not to quote the article of 26th April, 2012 in his particulars of claim is not far off to see. I have, for purposes of leaning on the correct side, taken time to read the said article which was tendered as evidence under exhibit B. The article reads:

"This is an excuse to fire Koki, period!"

I almost fell off my chair after hearing news that Mbabane Highlanders have suspended their coach Thabo 'Koki' Vilakati.

Apparently, the bone of contention (leading to this decision) is the issue of incentives pledged by the mysterious donor who offered the team's player E1000 each to beat Royal Leopard last week.

I mean, really guys, if anything, this is breeding more unnecessary confusion in the team. Where is the crime in 'Koki' offering his players incentives to win a match, regardless of where he got that money from?

It would have been understandable if the players were given the money to lose the game in question that would have been a scandal worth investigating. In this case, they were given the cash to win that game and as to why this is now being made a big issue is a mystery really.

It does not require a rocket scientist to detect that there is more to this issue than meets the eye, it's pretty obvious if you ask me. The E1000 incentive issue is just tip of the iceberg, Highlanders must just come out in the open and tell the public the whole truth behind their decision to suspend 'Koki'.

Those who have been following the events at Highlanders at recent times would agree that 'Koki' was long fired by the team. He has been living on a time bomb because certain influential in the team want him out. This is not an allegation but the truth.

It's actually surprising that the team went out of their way to institute investigation on something that should not be made an issue in the first place. This is just creating false alarm and tainting the image of 'Koki' whom we all know, was born and bred at Highlanders. This man has never made secret of the fact that he is a staunch supporter of the team and it would be hard to believe that he would do something that would deliberately let the team down especially because he is the coach (or is he?).

Clearly, the problem here is that Highlanders are mixing two different issues. The suspension seems to suggest that 'Koki' did a terrible thing in accepting the money for the players as incentives.

Highlanders' powers-that-be should not look for short-cuts to take decisions, which in this case, is firing 'Koki'. This suspension is just a bluff, 'Koki' is as good as gone from his position. Granted, 'Koki' should have declared the money from the mystery donor to the team's senior officials but people should not forget that as manager, it is part of his duties to motivate his players ahead of games. He cannot be faulted for that.

The decision to suspend him will backfire badly for the team in the future, that's a friendly warning. The issue of incentives should not be linked to this decision, it has nothing to do with it actually. It is just being made as an excuse to fire 'Koki', period!

Unfortunately, the prosperity would judge Highlanders harshly on this issue. 'Koki' has delivered on his mandate to rebuild Highlanders this season, which is demonstrated by the fact that they managed to reach the SwaziBank Cup final and challenge for MTN premier league honours. Where do you fault him then? Anyway, the truth, we hope, will come out soon. We will wait for that day."

20. The article is totally silent about the plaintiff and let alone about the board of directors of the club. It merely tells the reader the reasons Koki was fired from Mbabane Highlanders. Why the defendants were sued on this article, it boggles the mind. However, as far as this court is concerned, what remains of it is to dismiss the plaintiff's claim in regard to the article of 26th April,

2012 outright and make a determination on the articles of 24th and 28th April, 2012.

Articles of 24th and 28th April

21. The particulars of claim reflects three headlines published in three different dates, viz. 24th, 26th and 28th April, 2012. The first published on 24th April, 2012 reads, "*Highlanders should stop shifting goal posts.*" The third, published on 28th April, 2012 reads similarly, '*Bulls' song out of tune.*' Glaring from the two captions published on 24th and 28th April, 2012 is that both refer not to the plaintiff but to the football club known as Highlanders or Bulls. That as it may, the question still remains, 'Are the two articles of 24th and 28th April, 2012 defamatory of plaintiff despite their headings making reference to a third party?'

Plaintiff's evidence and its adjudication

22. Plaintiff as PW1, testified that he was a businessman and self-employed. He was running a filling station at Lomahasha area and was into heavy plant business. He was also given tenders at Siphofaneni. He has two homesteads situate at Siphofaneni and Mfabantfu. He has been a member of the House of Senate for fifteen years consecutively. As a member of Senate, he held the position of Deputy-President for a period of thirteen years during his

tenure. He is a staunch supporter of Mbabane Highlanders. In 2012, he was the chair of the Board of Directors of Mbabane Highlanders.

23. The structure of Highlanders is, firstly at the top, the board of directors who manage the club by pumping in finances. Immediately below are the patrons. These are the owners of the club. No decision is implemented by the board of directors without the patrons' consent. At the far bottom is management who run the day-to-day affairs of the club. In 2012, Lucky Mahlalela was the chair of management and also patron of the club. He was also the secretary general of the patrons. In short, Lucky Mahlalela was the owner of the club. He therefore could not be fired from the club. However, it is not clear why Lucky Mahlalela decided on a certain day to absent himself from work. The daily business of the club was negatively affected by so doing.

Plaintiff's evidence on the elements of defamation

24th April, 2012's Article

24. The article whose title reads, "*...Highlanders should stop shifting goalposts*" reads in its entirety:

"As I see it, the problems at giants Mbabane Highlanders are similar. I guess that is why both team's set of fans have suddenly become the best of friends.

They do not say 'birds of a feather flock together' for nothing.

There is something unifying these two fallen sides unfortunately, it is not something good.

Like their Wanderers' counterparts, the Highlanders supporters were anticipating a win against Pigg's Peak based ensemble Malanti Chiefs on Sunday at the Somhlolo National Stadium. They too in their naivety were still nursing hopes of clinching the league championship despite seeing that their favourite side does not have the quality to go all the way in the league.

They too reacted like acid when they realised that their faint hopes of winning the crown would never materialise. That is why a section of the teams' fans hurled all sorts of insults on the technical bench headed by Thabo 'Koki' Vilakati. In all honesty, Vilakati is not a saint, which is to mean the man has his own flows but to blame him for the team's overall showing would be a bit unfair to him.

Mistakes

He may have during the course of the season had his mistakes but the overriding factor here should be his contribution to the team, which in all honesty cannot be taken for granted. He has somehow revamped Highlanders and their failure to win anything cannot be pinned directly to him.

Instead, Highlanders should be addressing their own problems, which have nothing to do with the tactical aspect of things. The club should be informing its supporters for instance as to how Lucky

Mahlalela found himself sidelined midway through his reign as chairman. Senator Ngomuyayona is now back at the helm.

Unworkable

This is the same man who had resigned citing unworkable condition and a busy schedule as the reason for stepping down. I have nothing against Gamedze. In his tenure before his unexpected resignation, he had led the Mbabane giants to glory in the SwaziBank Cup, so I cannot have qualms with his return. It is, however, the division in the team that has been caused by his comeback that I am worried about.

The division at Highlanders is there for everyone to see. From the team's top officials down to the players, there is no unity and no team can win the league championship [as] a divided lot. Now, it is easy for the team supporters to apportion the team's ills to the technical bench but the truth of the matter is that there is more than meets the eye.

If Highlanders are to relive their glory years, then the team's authorities need to do introspection and see where they could have lost track. As things stand not even the revered Jose Mourinho can succeed at the Highlanders at this rate."

25. Testifying on this article, the plaintiff stated:

"The 3rd defendant said the person who was destroying Highlanders is me. He said I fired Lucky, something I never did. Lucky secured us a sponsor from G. Fox. This did not qualify to the standard of PLS. G. Fox jersey didn't have PLS logo. It has its own logo and it's too big. We didn't use this jersey as the referees said it didn't meet the standard.

We used the jersey for practicing. I suspect this is what made him not to attend to the team's business."

26. The defendants firstly, did not write about the destruction of Highlanders in as much as they wrote about their failure to win the tournament. So no ordinary reader would have interpreted the article to say the plaintiff was destroying Highlanders. Secondly, nowhere does the article reads that plaintiff fired Koki. If there was any mention of Koki being 'sidelined' the defendants apportion that to the club and certainly not the plaintiff. That is why the defendants called upon the club to explain to its fans on how Koki was sidelined. The article did not call upon the plaintiff to explain how Koki was sidelined. They authored in this regard, *"Instead, Highlanders should be addressing their own problems, which have nothing to do with the tactical aspect of things. "The club should be informing its supporters for instance as to how Lucky Mahlalela found himself sidelined midway through his reign as chairman."* The sentence that follows immediately which is, *"Senator Ngomuyayona is now back at the helm,"* cannot by any stretch of imagination be interpreted to mean that plaintiff fired Koki. In brief there is nothing defamatory in the quoted paragraph.

27. The plaintiff then read the article. He thereafter testified:

“He (3rd defendant) is saying that the person to be blamed is not Koki (Lucky Mahlalela) but me. I should explain how exactly I fired Lucky.”

28. This was a repetition of his earlier evidence that he is to be blamed for the ills of the club in that he fired Koki. I have demonstrated that nowhere does the article read that the plaintiff is responsible for the ills of the club and that he fired Koki.
29. In expatiating the above allegation, the plaintiff took time to explain that he never fired Koki but Koki decided not to return to the club. Koki was not happy that the jersey he had organized was used for training. Plaintiff went on to testify that he had no powers to fire Koki as Koki was the team himself, having been the longest member of the team and a Secretary-General. This evidence was not necessary firstly, in view of the fact that the article does not say Koki was fired and his sidelining is not directed to the plaintiff as the cause. Secondly, it is not one of the elements of defamation that the plaintiff must establish the correctness or truthfulness of the impugned statement. In terms the Roman-Dutch law, it is not an element of defamation to prove that the statement was incorrect or false. It only becomes a defence at the instance of the defendant that the challenged words were true or correct. This is under the defence of fair comment.

30. Reading the sub-title, '*Unworkable*,' plaintiff was asked by his attorney if he caused any division by his comeback. The plaintiff responded by stating, "*He [3rd defendant] bluffs by saying I won the Cup [Swazi Bank] and then nails me. I never caused any division. I was financing the team.*" He also proceeded to testify. "*He was saying I'm responsible for causing all the troubles in the team. He said I divide the team.*"

31. I must, for purposes of clarity regurgitate the wording in the sub-title. It is written:

"Unworkable

This is the same man who had resigned citing unworkable condition and a busy schedule as the reason for stepping down. I have nothing against Gamedze. In his tenure before his unexpected resignation, he had led the Mbabane giants to glory in the SwaziBank Cup, so I cannot have qualms with his return. It is, however, the division in the team that has been caused by his comeback that I am worried about."

32. From the above, the writer, having stated that the plaintiff was at the helm of the club, then reminds the reader that the plaintiff suddenly resigned on grounds of busy schedule and unworkable conditions which were in the very

same club. He again reminds the reader that the plaintiff was very good during his tenure of office in the club as the club won the Swazi Bank tournament under him. The writer expresses his own opinion by stating that for the reason that the plaintiff previously led the team to a win, he has no issue with the plaintiff's comeback or return to the club. With the greatest of respect to plaintiff, there was absolutely nothing sarcastic about this information. For plaintiff to testify therefore that the writer first '*bluffs*' by saying, "*I won the Cup,*" is unfounded in light of the manner the article reads.

33. The writer then states, "*It is, however, the division in the team that has been caused by his comeback that I am worried about.*" From this words, Counsel for the plaintiff posed, "*Did you cause the division?*" This question was unfortunate. It does not emanate from the wording of the article. It presupposes that the article stated that plaintiff had caused a division in the club by his coming back. Again with due respect, the article states that plaintiff's comeback had caused a division and this is different from saying plaintiff had caused the division by his comeback. The fair question should therefore have been, 'What caused the division in the team?' The answer would not have been, 'Plaintiff by coming back' but 'Plaintiff's comeback.' To give the first answer hereto disregards the preceding statement to the

effect that plaintiff is a man of capable capacity to take the team to glory as he did during the Swazi Bank Cup. It further ignores the writer's opinion about the plaintiff's comeback that he has no issues about his return to the club. In other words, the writer welcomes plaintiff's return by reason of his capabilities to make the team win. The second answer however takes into account the background information and appreciates that it is not plaintiff who has caused the division but his comeback only. This is fortified by the writer proceeding to call upon the club and certainly not plaintiff to '*do an introspection and see where they could have lost track,*' as evident in the following paragraphs of his statements.

34. It must be borne in mind that the ordinary reader will not read the words or sentence in isolation. He will read the entire statement before drawing a conclusion. For the above, I find that the words in the article of 24th April, 2012 were not defamatory of the plaintiff.

Article of 28th April, 2012 – Captioned “This is an excuse to fire Koki”

35. The plaintiff handed the article as exhibit C. It reads:

“BULL’S SONG OUT OF TUNE!

God knows what is happening at fallen giants, Mbabane Highlanders,

The black and white ensemble had dominated newspaper headlines in the past week albeit for all the wrong reasons with the latest being the announcement of the immediate suspension of head coach, Thabo 'Koki' Vilakati.

To say I saw it coming would be an under-statement. Indeed, like symptoms of flue, it started with a few irritations and could actually be felt coming.

I say what is happening at Highlanders is self-inflicted injury. To be in a better position to map a way forward for the Mbabane giants, it is imperative that I interrogate the team's past.

Towards the end of last season, the team's chairman, Senator Ngomuyayona Gamedze announced his resignation from the team through the media. I have no qualms with that. Fortunately, I wrote the story having interviewed the senator, who cited a busy schedule and ill health amongst his reasons of stepping down from the position.

Lucky Mahlalela was unveiled as the new boss, albeit on acting basis. Mahlalela did old the fort and seemed to be doing remarkably well judging by the results inside the field of play. He assembled his Management Committee (MC), which was headed by the team's former player, Simon 'Harare' Thwala as the chairman. Well, it is now history that the two have been tossed aside like dirt.

As earlier stated Highlanders were riding the crest of the wave and even booked a place in the finals of the SwaziBank Cup, while also challenging strongly for the league crown. Just before the team's derby match, arguably their most important fixture in the domestic scene, senator Gamedze made his return to the team, albeit clandestinely.

His return seemed to be kept a top secret by the club as it was never officially announced, like it was the case when Mahlalela was unveiled. Upon getting the news of Gamedze's return I wondered why Highlanders were fixing something that was not broken.

They do not say you don't fix it when it isn't broken for nothing. I knew in my heart that this was the start of trouble for the Mbabane giants.

I do not doubt Gamedze's passion and loyalty to the Mbabane side. However, following the latest, I can safely say now that I only respect the man as a politician and elderly citizen of the country but definitely not as a Highlanders boss.

Being the senior person he is; Gamedze should have at least waited until the end of the season to make his comeback. What harm would that have done really? As it is now, it is very difficult to ignore comments made by some of the team's officials that the man merely wanted to bask in the glory of the SwaziBank Cup. How does one ignore such comments, irrespective of the fact that they could be inaccurate?

He has not made matters any easier for himself as well with the commissioning of a probe to investigate the team's win over police side Royal Leopard.

Funny is it not that a team would fail to investigate games they have lost but one they won? Gamedze seems to [sic] playing right into the hands of his detractors, who are alleging that he has something against the suspended coach, Thabo 'Koki' Vilakati. Or was the fact that Gamedze was not present when Vilakati was unveiled as the manager/coach prompted such a decision?

I am still wondering who in his right senses at Highlanders did not want to see the team win. Had they lost their game against Leopard that would have meant five straight loses.

And where would that have put Vilakati as a coach? Would he not have lost his job? Had the team lost the match against Leopard, would a probe been instituted? As a manager, Vilakati is bound to go out of his way to scout for sponsorships in a bid to motivate his players.

Instead of trying to shift the focus, let me suggest to Gamedze and his team to address the real problems affecting Highlanders. As I see it, Gamedze could be the problem and not anyone else."

36. The plaintiff testified: *"Bull's song out of tune!" 'Song' is the name he [writer] ascribed to me. This article was written by 3rd defendant."*

37. With the greatest of respect, an ordinary reasonable newspaper reader would not, by any stretch of imagination, have ascribed the word 'song' to mean the plaintiff. This piece of evidence finds no support.
38. Plaintiff proceeded to refer to paragraph 5 of the article. He testified;
"He is carrying on with the article of 24th, saying I'm the trouble maker. He was directing the fans to me to be violent."
39. The paragraphs were marked consecutively. Paragraph 1 was identified during the trial as the caption, *"Bull's song out of tune!"* So that paragraph 2 became the first sentence which reads, *"God knows what is happening at fallen giants, Mbabane Highlanders."* Paragraph 5 reads therefore, *"I say what is happening at Highlanders is self-inflicted injury."* So the question is, would an ordinary reader of the newspaper have ascribed the meaning testified upon by the plaintiff that the defendants were carrying on with the article of 24th April, 2012? Would he understand that such words are to the effect that the plaintiff is the trouble maker at Highlanders? The answer is obvious. No reasonable reader of the newspaper would have understood the sentence, *"I say what is happening at Highlanders is self-inflicted injury,"* to mean that firstly, the writer was carrying on with the article of 24th April,

2012. This is more so as that article of 24th is totally devoid of any defamatory words against the defendant as alluded above. Secondly, no ordinary reader for the sport's section would have concluded that such sentence refers to the plaintiff as the trouble maker at Highlanders as the sentence does not read, "... *is self-inflicted injury by Gamedze*". A man of average intelligent newspaper reader would have understood paragraph 5 as '*self-inflicted injury*' that Highlanders itself is responsible for its own woes. Highlanders is not the plaintiff in this case. For these reasons, the meaning ascribed to paragraph 5 as testified by plaintiff stands to fall.

40. On paragraph 8, the court's attention was drawn to the words, "...*tossed aside like dirt,*" and plaintiff testified that such words meant that it was him who did that and such was not true as Harare was not fired. The entire sentence reads: "*Well, it is now history that the two have been tossed aside like dirt.*" Nothing in this sentence, let alone the entire paragraph, makes reference to the plaintiff. There is therefore nothing defamatory of plaintiff in the words referred to.

41. The preceding paragraphs to 11 were said to be untrue. The plaintiff testified under paragraph 11 that the writer was judging him and inciting the people

against him. He was saying he could be Senate but not Highlanders' boss. Again, an ordinary reader's conclusion would not be that such words were defamatory of plaintiff and if they were, they were too trivial for litigation. The test is whether such words could be said to lower the reputation of the plaintiff in the right thinking members of society (newspaper readers). I do not think so in the instance of this case. The writer first praised or elevated his character by writing that he respects him as a member of Senate but not as Highlander's boss. Further, the defendants raised a defence of fair comment. In the circumstance, this was a fair comment in view of the undisputed evidence that Highlanders was indeed losing games during his return as boss of Highlanders and Koki's absence.

42. On paragraph 12, he attested: *He says I wanted to bask in the glory of SwaziBank. This is defamatory of me. He says I only came when it is certain time like mushroom that shows up upon thunder.*” Again paragraph 12 must be read in context in terms of the principle of the law governing such actions. The writer stated: *“As it is now, it is very difficult to ignore comments made by some of the team's officials that the man merely wanted to bask in the glory of the SwaziBank Cup.”* Then there is a sentence that follows immediately which reads: *“How does one ignore such comments, irrespective of the fact that they could be inaccurate?”* This proceeding

sentence reflects that the writer did not write as a fact that plaintiff came to *'bask in the glory of SwaziBank Cup'*. He drew the attention of the reader that the comments by plaintiff's officials that plaintiff merely came to *"bask in the glory of the SwaziBank Cup"* could not be correct. An ordinary reader of average intelligence would therefore have concluded that the statement that plaintiff came to *"bask in the glory of SwaziBank Cup"* were merely unsubstantiated allegations. The end results therefore would be that plaintiff's reputation would not be lowered by such statement.

43. The plaintiff then testified on paragraph 14 where he stated: *"He (writer) tells people that I don't like winning. He is defaming me."* Again, no ordinary reader would have imputed such meaning to paragraph 14 of the article. The article reads, *"Funny is it not that a team would fail to investigate games they have lost but one they won? Gamedze seems to [sic] playing right into the hands of his detractors, who are alleging that he has something against the suspended coach, Thabo 'Koki' Vilakati. Or was the fact that Gamedze was not present when Vilakati was unveiled as the manager/coach prompted such decision?"*

44. Plaintiff then turned to paragraph 16 which reads: As a manager, *"Vilakati is bound to go out of his way to scout for sponsorships in a bid to motivate*

his players.” The plaintiff pointed out *viva voce*, “*He said so clearly, telling all Highlanders that I’m the problem.*” He continued, testifying that 3rd defendant was saying, “*Do you know of a ‘real problem - at paragraph 16. He says ‘look at the problem – He says it is not the players, management. He points at me as the problem.’*” This meaning attributed to paragraph 16 as quoted herein is very unfortunate to say the least. There are no basis to say what plaintiff testified on.

45. Plaintiff summed up his evidence under the article published on 28th April, 2012 by attesting: “*If you are at the stadium, you can’t come out. After the game in 2012, I had to leave before the game was over. They came to me saying I was killing the game. They don’t want me. They were led by Socks.*” Nothing was said about the last paragraph which was paragraph 17. I too say nothing further therefore. I guess Counsel for plaintiff was guided by the fact that paragraph 17 was not pleaded in the combined summons by plaintiff. In fact, turning to the combined summons served upon the defendants, only paragraphs 1, 11 and part of paragraph 12 were pleaded with regard to the 28th April, 2012 article. None of the impugned articles were attached to the combined summons. All three articles were discovered later in the proceedings, viz., after filling of the plea. In brief, Counsel for

plaintiff cannot be faulted for not leading plaintiff to testify in regard to paragraph 17 of the 28th April, 2012 article as he was alive to the principle of our law that a party stands or falls on his pleadings.

Causal nexus

46. In such *lex aquilia* claims, the enquiry on causation (but-for-test) is two-fold. The first is to enquire whether the loss was factually caused by the conduct or omission of the defendant. If no, the enquiry ends. If yes, the next question is whether there is legal causation. This tests the remoteness of the loss of the plaintiff as a result of the wrongful conduct or omission. **Nkabinde J**¹¹ extensively analysed the position of the law in this regard. The learned Justice referred to **Siman's** case¹² and quoted:

“As was pointed out by this Court in Minister of Police v Skosana 1977 (1) SA 31 (A) at 34F-35D, 43D-44F, causation in the law of delict involves two distinct enquiries: (i) whether the defendant's wrongful act was a cause in fact of the plaintiff's loss; and (ii) if so, whether and to what extent the defendant should be held liable for the loss sustained by the plaintiff (this latter enquiry often being referred to as the question of the

¹¹ Lee v Minister for Correctional Services 2013 (2) SA 144 (CC)

¹² Siman & Co. (Pty) Ltd v Barclays National Bank Ltd 1984 (2) SA 888 AD at para 48

remoteness of damage). In Joubert The Law of South Africa vol 8 title "Delict" (by Prof J C van der Walt) paras 47-49, the terms 'factual causation' and 'legal causation' are used to denote the concepts underlying these two enquiries."

47. Turning to the plaintiff's case in terms of factual causation, the plaintiff described the behavioral pattern of the fans for Mbabane Highlanders in his early stages of his evidence-in-chief. He testified that Mbabane Highlanders was a football club commanding the largest supporter base, spread across the Kingdom. Its supporters came from all walks of life, namely top, middle and low classes. Its followers were peculiar in that on Highlanders winning a tournament, they would run berserk, even nude in the play-ground, celebrating its victory. Similarly, when Highlanders lose a game, the supporters became violent. For this reason, Highlanders took a lead in paying fines for its violent supporters. High security was always needed when a game was scheduled for Highlanders. For this reason, Highlanders never played in unsecured grounds such as Big-Bend and Manzini Trade Fair. When a game was scheduled to play against Highlanders, the elders had to camp overnight in the play-ground and dressing rooms in order to ensure that there was no witchcraft by the opposition. Should any person be

identified as the cause of Highlanders' loss of a game, the supporters did not think twice in dealing with him in a violent manner.

48. Now, if the attestation at the instance of the plaintiff is anything to go by that he faced violence during the period of 2012 from Highlanders fans, the evidence attested by him points that such was expected because it was common cause that Mbabane Highlanders was losing the games during this period. It becomes difficult for the court to associate such violence against the plaintiff by the fans of his club solely on the articles by defendants. In other words, if his reputation was lowered in the sphere of football, it could not be solely attributed to the articles by defendants when considering the behavioral pattern of Mbabane Highlanders' fans as testified by plaintiff that violence runs in the blood of the Highlanders' fans on losing a game, thus the endless fines.

49. Further, plaintiff testified that after the said articles, he lost the elections to return to parliament. This cannot be associated with the articles, I am afraid. In fact the articles (24th and 28th April, 2013) pointed out that plaintiff could not be faulted as a member of Senate. The writer stated that he personally respected him as a member of Senate. Plaintiff further testified in-chief that Senator Lutfo Dlamini advised him to leave football and concentrate on his

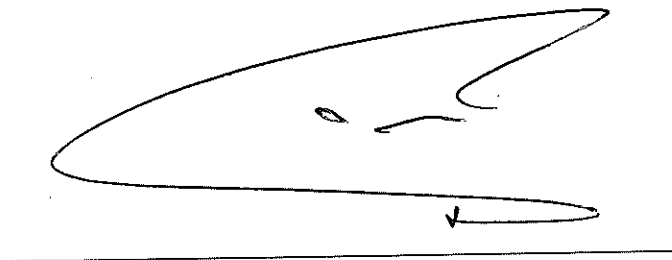
work as Senate. This again points that his image as Senator was never tarnished. In law, there is no causal link between his losing the election in order to return to Senate and the articles published. The evidence therefore that he lost his seat in the election of Senate due to the articles finds no support.

Orders

50. In the above, I enter as follows:

50.1 Plaintiff's cause of action is dismissed;

50.2 Costs to follow the event.

A handwritten signature in black ink, consisting of a large, sweeping loop followed by a smaller, more complex flourish. The signature is positioned above a horizontal line.

M. DLAMINI J

For the plaintiff : **M.P. Shongwe** of Magagula Attorneys

For the defendants : **Z. Shabangu** of Magagula & Hlophe Attorneys

