

IN THE HIGH COURT OF ESWATINI

HELD AT MBABANE

CASE No. 839/2022

In Matter between:

DUMA DAMARA MHLANGA

PLAINTIFF

And

THULILE MABUSELA (NEE MKHONTA)

DEFENDANT

Neutral citation: *DUMA DUMARA MHLANGA vTHULILE
MABUSELA (NEE MKHONTA) (839/22) SZHC 293
[2022] (25.10.2023)*

CORUM: Z. Magagula J

Dates heard: 21.04.2023

Date delivered: 25.10.2023

JUDGEMENT

- [1] By combined summon sued out of this court, the plaintiff claimed the sum of E1 000 000 (One Million Emalangeneni) from the defendant in respect of injury in his good name and reputation.
- [2] In his particulars of claim the plaintiff alleged in or about the 21st March 2022 and at Mbeka High School in the area of Nginamadvololo in the presence of Mavela Dlamini , Ntokozo Gwebu and Mcondisi Mavuso the defendant stated in to the plaintiff in SiSwati language that :
- “ Ulala nebafelokati, uneligciwane hamba uyonatsa emaphilisi, futsi utselelane nebantfu labanengi ngalesifo se HIV, futsi kenendvodza yemango loyichwalisile”
- [3] When these words when translated into the English language they mean:
- “ You are is in the habit of having sexual relations with widows, that you are HIV positive and you have also infected a number of people with the HIV virus and are responsible the illness of a member of the community”*
- [4] The Plaintiff stated that these words were wrongful, unlawful and defamatory of and concerning him, that they were made with the sole intention to defame and injure him in his reputation within the school and the community at large.
- [5] He further averred that the statement was understood by the addressee and was intended by the defendant to mean that Plaintiff was adulterous, sexually promiscuous and is infected with the HIV virus, which he is also spreading around.
- [6] The Defendant did not enter notice to defend or file a plea. The matter was heard as an undefended action.
- [7] In evidence, the Plaintiff gave a brief background to the matter. He told the court that on the 21st day of March 2022 he instructed a learner to roast green mealies for the teachers. The learner was to carry out this task at the school kitchen. After a while Plaintiff went to find what was the progress from the learner. He found that some

of the mealies had been eaten by another learner, who was Defendant's son.

- [8] The Plaintiff asked from Defendant's son why he had eaten the teacher's mealies and instead of apologising the boy accused Plaintiff of harbouring a grudge against him. Plaintiff tried to mete out some punishment, but the learner ran out of the school premises to tell his mother that Plaintiff wanted to punish him.
- [9] The Defendant then came to the school where she found the plaintiff in the staff room together with the school Head teacher and other colleagues. She the shouted and made the allegations complained of.
- [10] The allegations became public knowledge such that other people including Plaintiff's cousin came to engage the Plaintiff on the matter. The Plaintiff found it necessary to prove to his cousin that the allegations were not correct by taking an HIV test which produced negative results.
- [11] Plaintiff maintained that the allegations made by the Defendant about his health status and his character were all false and defamatory.
- [12] In defamation cases, once it is proved that publication of the statement or words complained of took place, it is presumed that it was done with the requisite *animus iniuriandi*. Animus in turn goes to and is inextricably linked to the quantum of damages to be assessed (if awarded).
- [13] Since the Defendant did not file a plea or defend the proceedings it is not possible for the court to find justification if any for her behaviour. If her intention was to protest the punishment that was intended for her son, then she went overboard. No doubt, the Defendant wanted to cause harm to the Plaintiff and this with an ulterior motive.
- [14] Defamation laws are generally aimed at protecting a person's right to an unimpaired reputation and good name. Reputation is the reflection which the individual has in the eyes of the society. It was stated in **Masetlha v President of South Africa and Another 2008 (1) SA 566 (cc)** that:

“...people live not by bread alone; indeed in the case of career functionaries, reputation and bread are often inseparable”

- [15] The Plaintiff testified that he was a young man with ambitions of one day heading the school. This dream may be stillborn if, despite what he may achieve with the learners academically, his reputation is soiled.
- [16] The test for defamation, generally, is whether in the eyes of a reasonable person with ordinary intelligence, the words used, so impaired a person's good name, reputation or esteem in the community. Reasonable readers take into consideration, not only what the words used expressly state, but also the implications of the words used. See **South African Associated Newspapers Ltd and Another v Yutar 1969 (2) SA 44- at 451**.
- [17] Reputation and dignity are discrete concepts. Respect for reputation and dignity of others is a requirement of the law with unfortunate consequences for defaulters. Thus damages arising from defamation fall to be awarded to an injured party.
- [18] In my view the words used by the defendant were harmful to the good name and reputation of the Plaintiff and amounted to a violation of the Plaintiff's dignity. The words were defamatory by their nature.
- [19] The Plaintiff contends that damages in the sum of E1 000 000.00 would be an appropriate award. He does not advance any mechanical arithmetic calculations, nor in all fairness is there an obligation on the Plaintiff that such calculation be advanced.
- [20] In the South African case of **Dikoko v Mokatla (6) SA 235 (CC 62) para 109-110** the difficulty that courts face when quantifying damages in cases of defamation was rationalized in the following terms;

“There is a further deeper problem with damages awards in defamation cases. They measure something so intrinsic to human dignity as a person's reputation and honour as if these were market-place commodities. Unlike business, honour is not quoted in the stock exchange. The true and lasting solace for the person wrongly injured, is the vindication by the court of his or her reputation in the community. The greatest

prize is to walk away with head high, knowing that even the traducer has acknowledged the injustice of the slur...

And

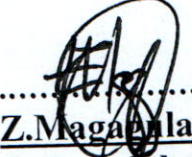
... [T]here is something conceptually incongruous in attempting to establish a proportionate relationship between the vindication of reputation on the one hand and determining a sum of money as compensation on the other. The damaged reputation is either restored to what it was, or it is not. It cannot be more restored by a higher award and less restored by a lower one. It is the Judicial finding in favour of the integrity of the complainant that vindicate his or her reputation, not the amount of money he or she ends up able to deposit in the bank."

- [21] The court has to take into consideration the character and status of the Plaintiff, the nature of the words used, the effect that they are calculated to have upon him, the extent of the Defendant and, in particular his attempts and the effectiveness thereof, to rectify the harm done. See **MULLER V SA ASSOCIATED NEWSPAPER LTD AND OTHERS 1972 (2) SA 889**.
- [22] The Plaintiff is a teacher who is also responsible for sports at the school. He testified that he had been teaching for the past 15 years with a clean disciplinary record. The statements were published to the among others, the school Headteacher, his colleagues and learners who were within earshot. The Defendant did not tender an apology even when Plaintiff confronted her with the results of the HIV test. He failed to respond to the summons when served with same. She showed no inclination or wish to mitigate the damage.
- [23] I am mindful of the fact that defamation actions should not be embarked upon for purposes of generating income. It must be borne in mind that a "grander" award does not necessarily restore one's injury to reputation and dignity. My view is that the defamation in this matter warrants the grant of a not substantial award in damages. The Plaintiff's own evidence is that the Defendant apparently makes a living by selling fruits and other items to learners next to school gate.

[24] **Order**

In the result I make the following order in favour of the Plaintiff against the Defendant.

- a. The Plaintiff is awarded damages in the sum of E 30 000.00
- b. Interest at the rate of 9% per annum from date of judgement.
- c. The Defendant shall be liable for the Plaintiff's costs on the ordinary scale per the Rules of this Court.


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Z. Maganla
Judge of the High Court

Appearance:

For the Plaintiff – Mr S. Maseko

For the Defendant – No Appearance