



IN THE HIGH COURT OF ESWATINI
JUDGMENT

HELD AT MBABANE

Case No.: 1906/2021

In the matter between:

DENNIS TIKHALO MBINGO

Plaintiff

And

“THE BRIDGE” ONLINE PUBLICATION

1st Defendant

MANQOBA MABUZA

2nd Defendant

Neutral Citation: *Dennis Tikhalo Mbingo vs “The Bridge” Online Publication and Another* (1906/2021) [2024] SZHC 249 (2024)

Coram: K. MANZINI J

SUMMARY: *Civil procedure – Plaintiff has instituted a claim for defamation against the 1st and 2nd Defendants jointly and severally. The Claim for damages for defamatory articles published by the Respondents on the internet. – Default Judgement entered and oral evidence heard in proof of damages.*

-The Claim for damages succeeds, and judgement entered in favour of the Plaintiff

JUDGMENT

17/10/24

K. MANZINI J:

[1] The Plaintiff herein is Mr. Dennis Tikhalo Mbingo, an adult LiSwati male, who is resident of Mbabane, and is employed as the Chief Executive Officer of First National Bank of Eswatini, Ezulwini, Hhohho Region.

[2] The First Defendant is “*THE BRIDGE*” ONLINE PUBLICATION, an entity whose nature and full particulars are unknown to the Plaintiff, holding itself

out as an online (internet) Newspaper or publication administered by the 2nd Defendant and whose publications are circulated in the Kingdom of Eswatini.

[3] The Second Defendant is Mr. Manqoba Mabuza, an employee of the United World College/ Waterford Ka Mhlaba School, holding himself out as being the Editor of the 1st Defendant. Beyond this, the Second Defendant's full and further particulars are unknown to the Plaintiff.

[4] In this matter the Plaintiff instituted an action to claim damages arising out of defamation of character against the 1st and 2nd Defendants who have been sued jointly and severally

BACKGROUND

[5] The background facts (which are not in dispute), the 1st and 2nd Defendants are alleged to have caused damage to the dignity and reputation of the Plaintiff, as a result of alleged acts of defamation perpetuated against him. According to the Plaintiff's claim as stated in the particulars of claim, the

Plaintiff is desirous of being paid damages in the amount of E1500, 000.00 (One Million Five Hundred Thousand Emalangeneni).

[6] Despite lawful demand on the 29th of August, 2021, the Defendants failed, neglected and/or refused to pay the amount demanded by the Plaintiff. The Plaintiff did appear before Court in order to adduce his oral testimony in support of his case, and is proof of damages. It is common cause that the Plaintiff's Attorney previously applied for, and was granted Default Judgment on the 15th of September, 2022. The claim herein is uncontested because the 2nd Defendant failed to appoint Attorneys of record after the withdrawal of their Attorneys in this matter.

[7] The Plaintiff's claim is further uncontested due to the fact that the 1st Defendant's precise whereabouts are unknown, and the Plaintiff is therefore proceeding with his claim as against the 2nd Defendant.

[8] At the Court proceedings; the Plaintiff (hereinafter referred to as P.W1) testified under oath that the current defamation claim follows other Court

proceedings under Case No. 1425/2021, wherein the Defendant was ordered by the Court, to remove the offending publication from internet, and all social media platforms. P.W. 1 explained that the article was written by the 4th Respondent in those proceedings, (a certain Veli Simelane), and was published by the 1st and 2nd Defendants. He stated that despite being ordered by the High Court in this fashion, the Respondents had failed to do so, and it is the Plaintiff's desire to recover damages suffered from the publications.

[9] According to the testimony of P.W. 1, on or about the 7th August, 2021 he received a call through social media (Facebook) from a certain Mr. Litchfield, and since he was driving towards Nhlanguano, his internet signal was weak, the call was disconnected. He further testified that later on that very day, he received yet another call on his mobile phone, and the caller identified himself as Mr. Litchfield again. According to P. W.1, the said Mr. Litchfield had asked to speak to the Chief Executive Officer (CEO) of FNB, and in the same conversation, the caller revealed later on that he was actually a Journalist, by the name of Manqoba Nxumalo.

[10] The testimony of P.W. 1 was that during the same conversation, the said Mr. Manqoba Nxumalo informed him that an “*Explosive publication*” was due to be released the following day (Sunday) at or about noon. According to P.W.1, the said Mr. Nxumalo (2nd Defendant) told him that he could choose not to respond, or comment, but the said publication would be released regardless. According to P.W.1 he was not informed by the said caller what the content of the publication was, but asked if he could forward a questionnaire to him. P.W.1 testified that since he had never even heard of the publication, nor that said publication was in existence in the country of Eswatini, he was very cautious therefore, and asked the said Mr. Nxumalo to forward the questionnaire to the Publications Officer of FNB, as this is in terms of the policy of the bank. According to P.W.1 he provided the Publications Officer’s whatsapp number to 2nd Defendant.

[11] The testimony of P.W.1 was that the Communications Officer later reached out to him after receiving the questionnaire from 2nd Defendant. According to the testimony of P.W.1, the Communications Officer informed him that the questionnaire had very little to do with the business of the bank, but was of a very personal nature, and he sought guidance on how to deal with it, in terms of formulating a response thereto. P.W.1 testified that he and the

Communications Officer, upon perusing the questions, concluded that the publication did not appear to seek to understand facts and were quite happy to publish the materials that they had on hand, from a source, or sources unknown to them. He pointed out that normally the bank (and himself in particular) is happy to engage the media, but in this instance, they had been skeptical, and quite reluctant to engage with the publication seeing that they did not know of them, and did not even know if they are properly accredited in the Kingdom. He stated that since their credibility was rather dubious, moreso, because the contact itself seemed fake as the caller first identified himself as a Mr. Litchfield, and later reintroduced himself as Manqoba Nxumalo. He pointed out at that even the whatsapp profile of the said Mr. Nxumalo, when viewed, seemed to be foreign, hence they opted not to respond to the questionnaire that was sent through.

[12] The Plaintiff stated that the communications team of FNB are employed by the bank to handle all issues related to public relations. The team, according to P.W.1, are a functional part of the bank, and they report to the Board of Directors. The Plaintiff explained in his testimony that FNB Eswatini, is a part of a bigger organization, being FNB South Africa which is a sister Company. P.W.1 further testified subsequent to this, and the very next day

on Sunday the 8th of August, 2021 the Defendants ran the article. He explained that because he does not have access to “*The Bridge*”, he was informed by the bank’s Communication Team.

[13] P.W.1 further referred the Court to annexure “*DM4*”, which is a document sourced from the 2nd Defendant’s social media, wherein he takes full responsibility and/ ownership of the “*The Bridge*” and at the notation situated at the end he signed off as the Editor of the Publication. According to P.W. 1 the 2nd Defendant in this document, was touting the publication to the readers on the internet in the following terms:

“Welcome to The Bridge, eSwatini’s first weekend online newspaper whose historic mission is to be a centerpiece of knowledge by providing you dear reader with breathtaking analysis, critical commentary and dog-sniffing investigation.”

[14] The Plaintiff further referred the Court to pages 14, 15 and 16 of the Book of Pleadings which contain “*DMI*” which is an annexure which features an excerpt from the publication circulated by the 2nd Respondent which contains what he terms “*deeply trashy and defamatory comments*” regarding his

personal life which were allegedly detrimental to the reputation and proper functioning of the bank. According to P.W.1, page 14 of the Book of Pleadings features a photograph of his face, and this is a picture that was taken of him whilst he attended a function at Mandvulo Hall. He pointed out that he had not authorized the publication of his photograph in this manner, and neither had such authorization been sought from him beforehand.

- [15] P.W.1 testified that the caption featured in the publication contained a profile which is entitled “*when an unethical work relationship destroy a good man*”, and this was right below his picture. He pointed out that the intention was clearly to insinuate that he was this “*good man*” being referred to in the publication, and also that this “*good man*” was the one conducting himself in an unethical manner at the work place. He continued to testify that the majority of information in the profile contained was information collected from his “*Linked-In*” profile, and it purported to be from dog-sniffing journalistic skills. He pointed out that the employment history was largely correct, but the majority of the contents of the article were false and were based on “*conjecture and malicious gossip*” and were not true. He explained further that on page 15, presented a build-up for another publication “*DM2*”, on pages 16 to 21, where the 2nd Defendant referred to an article which would

be released or published on Sunday. He pointed out that page 15 presented beneath his picture the following caption:-

“Coming Sunday – 08 August 2021”

[16] P.W.1 testified that page 15 heralded the article which is featured on Annexure “DM2”, which is on page 16 of the Book of Pleadings. The Plaintiff also applied that DM1, and all the previous annexures referred to herein should be made part of his evidence, which application was duly granted by the Court. PW1 proceeded to elaborate on DM2, and stated that although the publication has sensitive content, however be referred to, and emphasized on the areas which he deemed to be injurious to his dignity.

[17] The testimony of PW1 was that he is a divorced male, and after separating from his wife in May, 2015, and after processing an amicable divorce, the said proceedings were successfully concluded when a divorce decree was granted by the Court in the year 2017. He stated that he and his former wife, Ncamsile Mbingo, have, to date maintained a very healthy relationship, and she had

provided him, and their two daughters with immense support throughout this ordeal with the publications which were made by the Defendants *in casu*. PW1 further testified that the article contained a number of injurious comments about him. According to PW1, the publication referred to alleged hiring, dismissals and/or departures of female staff at the bank, at the behest of the CEO. He stated that the content of the article suggest that there was no process or professionalism involved in these processes, and also that he made the decisions purely on a whimsical basis. PW1 stated that all of this was deeply troubling and injurious to not only the bank, but also himself as the CEO of the business. He stated that the bank is a highly regulated business, and suggestions made by the article was that it was “captured” by him, and he manipulated the female staff purely for his own romantic interests.

[18] The Plaintiff in his testimony, stated that as a part of Annexure “DM3” there was mention in the publication of a Ms. Vilane, which also featured a photograph of her. He explained that this is a lady with whom he had been in an intimate relationship, after he had separated from his wife. He stated also that this relationship had borne a five (5) year old child. It was also stated in evidence by Plaintiff that reference also needs to be made for DM5 which is an annexure that was published a week following the first publication, now

seeking to link the Plaintiff with His Majesty the King of Eswatini, and trying to cast aspersions on them, in that it was alleged that they are both proponents of patriarchy.

[19] It was the testimony of PW1 that this same profile was used to launch an attack on the FNB South Africa sites where it was contended that the Plaintiff ought to be released from employment, and these attempts were filtered out and blocked. He explained that both the articles still appear on the “*Bridge website*”, and this is the case despite having been ordered to remove these by this very Court in September of the year 2021.

[20] The Plaintiff in his testimony also stated that a third attempt was made after the publication of the defamatory article, to call the Chairperson of the FNB, South Africa Board of Directors, and alleged that they were representing News 24, ENCA, CNN and Women and the Law. He pointed out that efforts were made to enquire from the various afore-mentioned media houses to find out if it was them that made these calls, but it was established that it was not them. He testified that although he does not have conclusive proof that it was

the Defendants herewith, but the pattern was consistent with how they reached out to him in the initial stages (by using fake profiles and pseudonyms).

[21] PW1 then proceeded to testify also about the immediate consequences of the articles. He pointed out that he runs a bank that forms a part of a highly regulated industry, and its business is founded on a high level of trust and integrity. He explained that the bank is a custodian of funds that belong to various natural, and artificial personalities in this country and the articles impacted on his dignity and standing for the regulator (The Central Bank of Eswatini). He stated that he had been placed in a situation where he had to immediately send a formal notification to the Central Bank about the article, so as to try and minimise the harm that publication could render, or inflict on the Regulator's perception of his professionalism within the banking sector.

[22] PW1 proceeded to also testify before the Court that multitudes of the banks customers, clientele and other stake-holders who received these articles, and this caused concern amongst these, regarding the authenticity of the contents of the articles. These concerns, of necessity had a bearing on their decisions of maintaining, or continuing their connection and relationship with the bank.

He stated that it was most disheartening that his place of employment was being assessed, through an outlook that was tainted by people's perceptions which were influenced by the personal attack that was being launched on his private life.

[23] To add to this, the Plaintiff testified that the most detestable results of all of this ordeal was when several anonymous people sent the media articles to his two minor daughters, and further stated in the same posts to his children that the (Plaintiff) ought to resign from employment within two days. The Plaintiff stated that these people who sent these articles told his daughters that if their father failed to resign within two (2) days, they would be abducted, raped and murdered. He pointed out that this level of trauma inflicted on himself, and his family required him to invoke different levels of interventions by way of therapy and heightened security measures because of the direct threat to the lives and/or wellbeing of his children.

[24] As a consequence of the false allegations made in Exhibits "DM2" and "DM5", there were threats made in the 1st Defendant's website, which threats, called for the Plaintiff's property to be burned as a result of the false

allegations made in these two Exhibits. PW1, in his testimony stated that he has also incurred legal costs, which were calculated at E77 029.25 (Seventy Seven Thousand and Twenty Nine Emalangeni, Twenty Five Cents) at the time. The Plaintiff stated that these costs are ongoing, as he continues with the process of fighting the legal battle to have the article removed from the internet, as well as other matters related thereto.

[25] The P.W. 1 in his testimony continued to give a narration of his professional history and standing in society. He stated that not only is he the CEO of FNB, but he also chairs a number of forums within the bank, as well as having a seat in other boards or forums in the banking sector. He explained that as a Chartered Accountant, as well as a banker, he is also involved in, and is a member of professional organisations. He explained also that as the Chairman of the FNB Foundation, an organisation which champions social causes including the combat of social discrimination, Gender Based Violence, and the upliftment of those individuals in society that are marginalised and under privileged, his good name and character ought not to be associated with the sexual exploitation of women at the work place.

[26] The Plaintiff informed the Court that due to the sensitive nature of the allegations in the articles, he did not wish to repeat these item by item. He pointed out that his prayer is that the Court should consider the contents of the combined Summons, in particular the Particulars of Claim which reflect his case against the Defendants. The Plaintiff submitted in his testimony that as a result of the publications his dignity was tarnished, causing damage to his reputation in society, as well as in his professional space. He explained that it is difficult to quantify the trauma and damage suffered in the public domain, particularly because the objective was uncertain. He prayed that the Court would award him the amount of E1 500 000.00 (One Million Five Hundred Thousand Emalangeni) as stated, and claimed in the particulars of claim as defamatory damages. He pointed out that though this figure, or amount would never be enough to put to right the damage inflicted by the Defendants to his reputation, but it would act as a deterrent.

[27] The testimony of PW1 stated also that the Defendants' failure to comply with the order of Court to remove the articles, or to issue a retraction was done in defiance. He stated that this was probably done because the 1st Defendant did not want the credibility of the publication to be put into question. The testimony of PW1 was that the compensation prayed for was not enough to

protect society from the reckless and wrongful publications, but he insisted that the value of the damages awarded against the Defendants lies in its deterrent effect to other publications who would seek to act in such an irresponsible fashion. According to PW1, he was of the firm belief that the reason that he and other leaders in the commercial and corporate spaces were being profiled in such a scandalous manner by the 1st Defendant is to promote their own interests, and also to put their website on the map as a platform that is intent on challenging the establishment. The testimony of PW1 was that this is evident from the second article “DM5” which seeks to link his person to that of His Majesty the King, and it is therefore clear that their agenda is also to make a mark in the political space.

[28] The Plaintiff further testified that he has failed to establish the existence of the 1st Defendant, hence the service of the Court process could not be effected upon them. He referred to paragraph 8.5 of the Particulars of Claim and confirmed before Court that he is standing by the contents of this paragraph. He pointed out that he is proceeding against the 2nd Defendant in his personal capacity. He explained that despite numerous checks no physical address could be found for the 1st Defendant, and he personally took part in making these checks, as well as the Communication Team of the bank. He pointed

out that the people that they managed to reach all distanced themselves with the publication. He testified that the Editor also attempted to distance himself with the publication, but proceeded to allow a huge (internet) footprint to be made in “D,M 4”, hence his inclusion in the Summons. He explained that the 2nd Defendant (the Editor) published the articles in his personal face book as well, hence he is personally liable (though jointly and severally liable) for any compensatory damages that may be awarded in favour of the Plaintiff herein.

ANALYSIS OF EVIDENCE AND THE LAW

[29] The Plaintiff herein has instituted an action as a result of defamation, which has resulted in damage to his dignity and reputation. The Plaintiff claims that 1st and 2nd Defendant are jointly and severally liable. In particular, the 2nd Defendant is alleged to have taken it upon himself to publish and/or post the Plaintiff’s photograph as well as the article on his personal Face book account wall. The claims against the 2nd Defendant as a result of the defamation, and the damage suffered as a result thereof are as follows:

29.1 Payment of the amount of E1 500 000.00 (One Million Five Hundred Thousand Emalangi) by 1st and the 2nd Defendant jointly and severally, such each paying the other being accused.

29.2 Interest on the amount of E1 500 000.00 (One Million Five Hundred Thousand Emalangi) at the rate of 9% *a tempore morae* from the date of Judgment to date of payment.

29.3 Costs of suit.

29.4 Further and/or alternative relief.

[30] It is trite that this Court on the 15th of September, 2022 did grant a Judgment by default against the Defendants after they had failed to appoint an attorney of record after the withdrawal of their Attorneys in this matter. The Plaintiff's Counsel proceeded on the 15th of October, 2022 to lead the Plaintiff in evidence in order to prove damages sustained as a result of the defamatory statements published against him. The Plaintiff in his evidence did testify that

he has thus far been unable to establish the existence of the 1st Defendant, hence service of Court proceedings could not be effected. He pointed out that he still maintains the contents of paragraph 8.5 of the Particulars of Claim. The said paragraph reads as follows:

“8.5 The 2nd Defendant on top of being the Editor of the 1st Defendant also took it upon himself to personally publish and/or post the Plaintiff’s photograph as well as the article in his personal Facebook Account Wall. Therefore, the 2nd Defendant is also personally liable for the damage claimed by the Plaintiff. In the premise, the 2nd Defendant is joint and severally liable with the 1st Defendant to compensate the Plaintiff for the damages claimed below.”

[31] It is further common cause that since the Plaintiff has already obtained default Judgment on the defamation claim, the Court herein has no need to determine whether or not the Plaintiff has actually been defamed by the publications. That has been obviated by the Judgment issued in default. What does remain

for this Court however is to assess the damages that have been occasioned to Plaintiff as a result thereof.

[32] It must be highlighted that from a constitutional perspective or premise, the right to human dignity is a right that is guaranteed by the Supreme Law of this land. **The Constitution of Eswatini, 2005** enshrines these rights in Section 14 as follows:

“14(1) The fundamental human rights and freedoms of the individual enshrined in this Chapter are hereby declared and guaranteed, namely...

(e) Protection from inhumane and degrading treatment, slavery and forced labour, arbitrary search and entry...” (Section 14(1) ()).

The Constitution in Section 18 (1) goes further to provide as follows in its bid to protect against inhuman and degrading treatments:

“18(1) The dignity of every person is inviolable”

[33] Having laid this foundation it is also pertinent for the Court to point out that although the law in Eswatini does recognise that the media in this country does have the right to exercise their freedom of expression, however this right ought to be curbed in certain respects. The extent of this limitation was described by the Supreme Court in the case of **African Echo (Pty) Ltd t/a Times of Swaziland v Inkhosatana Gelane Simelane (77/2013) SZSC** where the following was held:

“I note straight away that the right of freedom of expression is that the law of the Medes and Persians. It is not sacrosanct. The Constitution subjects it to respect for the rights of dignity of others, amongst other fundamental rights.”

[34] As previously stated herein this Court no longer has to determine if indeed the Plaintiff herein has actually been defamed by way of delving, into whether or

not the elements of defamation were fulfilled. The fact that the Defendants herein failed to defend the action herein places this matter in the same footing as the scenario that took place in the case **of Media 24 Ltd t/a Daily Sun v Better Du Plessis (2017) ZASCA 33 (29/03/17)** where the appellants actually conceded to the defamatory nature of the article and pleaded substantial truth and public interest. In that case the Court stated the following:

“[15] The gist or string of the article is determined with reference to the legal construct of a reasonable reader. It is the meaning that the reasonable reader of ordinary intelligence would attribute the words read in the context of the article as a whole. The text is an objective one. As a Corbett CJ explained in Argus Printing and Publishing Co. Ltd & Others v Esselen’s Estate 1994 (2) SA 1 (A) at 20 E – 6, the ordinary and natural meaning of the words takes account of not only the words expressly said, but also of what they imply”.

[35] In an endeavour to fully appreciate what may be referred to as an “ordinary reader”, the Learned Petse JA made reference to what is described as an

“*instructive*” statement made by Colman J in Channing v South African Financial Gazette Ltd 1966 (3) SA 470 (W) at 474 A – C, which reads thus:

“From these and other authorities it emerges that the ordinary reader is a reasonable, “right thinking” person, of average education and normal intelligence, he is not a man of, “morbid or suspicious mind”, nor is he “super critical or abnormally sensitive; and he must be assumed to have read the articles as articles in newspapers are usually read. For that assumption authority is to be found in Basner v Trigger 1945 AD 22 at 35 – 36. It is no doubt fair to impute to the ordinary reader of the South African Financial Gazette a somewhat higher standard of education and intelligence and a greater interest in an understanding of financial matter than newspaper readers in general have. But this, I think, is clear; one may not impute to him for the purposes of this inquiry, the training or the habits of mind of a lawyer.” (paragraph 16).

[36] It is also worthy of note that although the order of default Judgment has already been obtained, this Court still has to exercise its discretion on the

assessment of damages in a lawful and/or judicious manner. It is also of great importance to bring to light that one of the important factors that the trial Court must take into account in making such determination of the award the fact that the Court finds that the Respondents are liable based on the said statement being false and negligently published (see **Charles Mogale and Others V Ephraem Seina 2008 (5) SA 637 (SCA)**).

[37] It is also true that the Defendants herein did not seem to care whether the statements published were true or not as they did state to the Plaintiff when he was called that whether he responded to the questionnaire or not they would proceed to run the article regardless. It is for this reason that this Court finds the Respondents liable for being negligent and/or reckless in this regard. Even when the Court ordered that the Respondent should remove the articles from the social media platforms, and all internet platforms in the order dated 10th September 2021, the Respondents failed to comply with this Court order. There was therefore a very blatant, and reckless disregard on the part of the Respondents regarding how the public at large, received and interpreted the contents of the articles. The Plaintiff testified before Court on his position in society, which testimony, depicted the positions that he holds in his professional capacities. The Plaintiff is not only the Chief Executive Officer

of the First National Bank, which is one of the biggest banks in this country's banking industry, but he is also a member of the Board of Directors of the bank. He is also the head of a highly regulated entity within the banking industry, and his reputation and that of the bank which he heads are very important to the society at large. This is the case because not only the citizenry is likely to be affected, but also the nation's economy because it is reliant on the stability of this industry. Certainly, any hint of a bank being run by a sexual predator, or one who employs people based on his own sexual inclinations is highly undesirable, and does not auger well for the banking that he heads. It is important for this Court to draw from the reasoning of the Court in the case **of African Echo (Pty) Ltd t/a Times of Swaziland v Inkhosatana Gelane Simelane (77/2013) SZSC** which is to the effect that a person's reputation is key, and even vital in the assessment of the extent of, or quantum of damages in a defamation claim.

[38] The Plaintiff in paragraph 8.2 of the Particulars of Claim averred the following:

“That the heading, sub-heading and words used in the article and in the context of the article are wrongful, untruthful and defamatory of the Plaintiff, in the way that they were intended and were understood by the readers of the article that the Plaintiff.”

In paragraphs 8.2.1 to 8.2.9 the Plaintiff alleged what the reasonable reader could read, and understand the article to mean. There was no defence put to the meanings as averred by Plaintiff in his particulars of claim.

It is trite that on the 8th of August 2021, the article published on both the 1st Defendant’s website, and also published by the 2nd Defendant on his personal Facebook Account Wall, featuring the Plaintiff’s photograph, and was captioned or headlined, “*FNB SEX SCANDAL*”, “*when unethical work relationships ruin a good man*” (see DM 2 attached to the Particulars of Claim. The relevant excerpts from the DM2 are as follows:

“8.1 The article proceeded to state inter alia the following:

8.1.1 *“All he (Plaintiff) needed to do was to lead professionally as he had done in the three countries he had been to ‘Gird up your loins’ the Bible calls of us all but in the case of Mbingo, further advice needed to be taken quite literally, especially for a man known as a Christian back in his university days.”*

8.1.2 *When Mbingo’s marriage to Ncamsile Mbingo broke down, he took a sharp Casanova turn with devastating consequences both personally and professionally.*

8.1.3 *The good man of yesteryears morphed into something even his wife had not known or contemplated. His love for women and his unethical relationships at work came to define his otherwise impressive curriculum vitae.*

8.1.4 *His relationship would have been forgivable if they did not interfere with his professional life, but they came to*

define unethical conduct that is slowly corrupting the corporate soul of Eswatini.

8.1.5 In the case of Mbingo, he hired his wife's friend, Gugu Dlamini, as his Personal Assistant at FNB. Dlamini went on to have a sexual relationship with Mbingo something which became fodder for gossip within the Bank's corridors and disappointed, if not ruined his relationship with Dlamini.

8.1.6 But if the love triangle needed spices then Amanda Vilane came dressed in shinning robes and took it a notch up. Vilane works at Revenue Authority as Chief Internal Auditor. At the time she worked with Mbingo's wife at the Revenue Authority but in different departments. It gets better Vilane is related to Dlamini.

8.1.7 When news started to leak that Dlamini was sleeping with her boss she would tell those who cared to ask that

it was not her who was in a relationship with Mbingo but her relative, Vilane. Mbingo himself took this decoy quite literally and went on to have sexual relationship with Vilane. In 2018, a child was born of the union.

8.1.8 Khumalo had just divorced her businessman Bheki Nkwanyana, the Plant Manager at DD Williamson, and felt forced to have a relationship with her boss, unethical as it may have been. Those who worked at FNB tell tales of how Linda Khumalo used to treat her junior staff knowing she had protection in high places.

8.1.9 There are several instances where Khumalo exhibited unprofessional conduct and Mbingo did not reprimand her.”

[39] It is this Court’s conviction that it can only be prudent, and most certainly fitting for it to align itself with the reasoning of the Supreme Court in the Gelane Simelane Judgment in view that the Defendants have failed to deny

that the reasonable reader of the online articles were at the understanding that was averred by the Plaintiff in his particulars of claim in paragraphs 8.2.1 to 8.2.9 as featured hereunder. The Plaintiff averred that the articles in the manner that they were worded, were wrongful, untruthful and defamatory of the Plaintiff and were understood by readers of the articles that the Plaintiff did the following:

“8.2.1 Abused his position as Chief Executive Officer FNB to induce his subordinates to have sexual relationships with him.

8.2.2 Is a womaniser who mixes his personal love life with is professional life.

8.2.3 Sexually abused and harassed his female subordinates with impunity.

8.2.4 He creates disharmony and infighting within the Bank as a result of his alleged multiple and concurrent sexual relationships with his subordinates.

8.2.5 As a result of his alleged numerous love affairs, his judgement is clouded and his decision making is biased in favour of the women with whom he had sexual relationships.

8.2.6 Is incapable of disciplining his subordinates with whom he has sexual relationships, and, as a result their misconducts were treated with impunity.

8.2.7 He abused his power to victimise his subordinates, reshuffle their positions to punish them and creates positions for his favoured subordinates.

8.2.8 Is not capable of executing his duties as CEO, which has resulted in the exodus of subordinate employees as a result of his love for women and victimisation.

8.2.9 Discriminated against his subordinates in favour of those he has sexual relationships with or were earmarked for such sexual relationships and is deprived.”

[40] It is clear that from the reading of the Particulars of Claim that the understanding ascribed by the Plaintiff to the articles is one that can be held to be valid. He has stated, and it is averred in the pleadings that a reasonable reader will assign the meaning as described therein. The said meaning being defamatory. The 1st and 2nd Defendants were, it was the finding of this Court, malicious in content at the time of publishing the article because they knew, or should have known, alternatively they ought to have taken reasonable steps to establish the truthfulness or otherwise of the content of the articles. It is also clear that the 2nd Defendant, who was personally served with the particulars of claim, failed to file a plea to even make an attempt to deny the allegations made by the Plaintiff in the particulars of claim. There is no denial

therefore, that the reasonable reader understood the article to mean the averments as stated in paragraphs 8.2.1 to 8.2.9 quoted previously. The articles published by the 1st and 2nd Defendants therefore can be taken, and it is indeed the finding of this Court, to mean that the Plaintiff, being the Chief Executive Officer of FNB Eswatini, abuses his power, and relies on his carnal desires and whims to influence the hiring and firing of employees at the bank.

[41] The Court finds that the Plaintiff has been able to prove on a balance of probabilities that the articles were malicious, wrongful and untruthful. This evidence which he delivered to Court orally, remains uncontroverted. It is also important to mention that the Plaintiff's personal love-life is not of public interest, and indeed the Defendants herein, did not even plead that this was the case.

[42] It is trite that at this juncture this Court has to contemplate and arrive at a reasonable, fair assessment, as well as an adjudication of the quantum of the loss suffered by the Plaintiff herein. To do this in a deft manner, this Court has to lean on authority for guidance as it has been said in many cases that the assessment of damage in non-pecuniary loss is a very complicated task. It is

therefore necessary to draw from the Learned Judges in the decisions that have gone before this matter *in casu*. (See the **Swaziland Government v Aaron Ngomane Case** (*supra*). The Court in the Ngomane Case also referred to the words of Lord Diplock in **Wright v British Railway Board (1983) AC 733 at pg 777 C** which read as follows:

“Non-economic loss is not susceptible of measurement in money. Any figure at which the assessor of damages arrives cannot be other than artificial and, if the aim is that justice meted out to all litigant should be even handed instead of depending on idiosyncrasies of the assessor, whether Jury or Judge, the figure must be basically a converted figure derived from experience and from awards in comparable cases.”

[43] Drawing from the case of **Lindifa mamba and Another v Vusi Ginindza Civil Case no. 1354/2000**, the Court did therein enumerate a number of factors that ought to be borne in mind when a determination as to quantum of non-pecuniary loss is made. The Court made mention of the following:

- 43.1 The character, status and regard of Plaintiff.
- 43.2 The nature and extent of the publication.
- 43.3 The nature of imputation.
- 43.4 The probable consequences of imputation.
- 43.5 Partial justification.
- 43.6 Retraction or apology.
- 43.7 Comparable awards and declining value of money.

[44] Drawing from the **Lindifa Mamba Case** (*supra*), as well as the **Gelane Simelane Cases** (*supra*). It is clear that the Plaintiff *in casu* is a man of considerable stature in society, as well as professionally within the banking community. He was not given the opportunity to respond to the questionnaire sent to him, and he was even told that the article would run regardless of whether he responded to it or not. Furthermore, he has detailed the expenses that he has had to incur in order to tighten the security of his home, as well as that of his young daughters. It was also averred by his attorneys in the closing submissions that to date the Plaintiff has incurred an amount of E77 029.25 (Seventy Seven Thousand and Twenty Nine Emalangeneni, Twenty Five Cents)

in legal fees. It is also key, and must be taken into account by the Court that the Defendants have failed to issue any kind of apology, or retraction for the defamatory articles. The Defendants have furthermore failed to comply with the Order of this Court under Case No. 1425/2021, wherein the Defendants were ordered to do the following:

- (i) Remove the online publication and all and other internet and social media platforms the article written by the 4th Respondent and published by the Respondents on the internet, headed “**when unethical work relationships destroy a good man**” and the readers’ comments thereto.
- (ii) To desist from further publication of the above mentioned and related stories perpetuating the allegations contained in the story.
- (iii) That service on any one of the Respondents be deemed to be sufficient service on all of the Respondents.

ADJUDICATION

[45] In view of the above mentioned factors this Court has taken cognisance of the Defendants continued failure to assuage the harm caused to the Plaintiff for the defamation he has suffered. The Court herein has also taken account of the manner in which the attack on the Plaintiff’s character has injured him not

only in his personal life, but also in his professional life. It is also important, it is this Court's finding that the Plaintiff has indeed suffered considerable damages. The Court has also had regard to comparable judgments of this Court in similar circumstances, such as that of **Inkhosatane Gelane Simelane (Supra)**, as well as that of **Mbongeni Ndlela & Another v Phila Buthelezi & Another (60/2020) [2021] SZSC 04 (31/05/2021)**

As result this Court is not inclined to make an award that may be regarded as “outrageous and unachievable in that it is unreasonably inflated (see; para 42 of the Mbongeni Ndlela case (Supra). The Court is taking this stance as there is no evidence before it that the injury or harm caused to the Plaintiff's reputation has actually had adverse effects on him professionally and socially.

[46] The Plaintiff's claim therefore succeeds. The Court herein enters judgment in favour of the Plaintiff in the following terms:

(i) The Defendants are hereby ordered jointly and severally, the one to pay, and the other to be absolved amount of 350,000.00(Three Hundred And Fifty Thousand Emalangen).

(ii) Interest on the said amount of E350, 000.00 (Three Hundred and Fifty Emalangeni) at the rate of 9% a *tempore morae* from the date of Judgement to the date of payment.

(iii) Costs of suit.

**K. MANZINI
JUDGE OF THE HIGH COURT OF
THE KINGDOM OF ESWATINI**

For the Plaintiff: Mr. S. Dlamini (Musa M. Sibandze Attorneys)

For the Defendants: No Appearance