



SWAZILAND APPEAL COURT

MASILELA, Moimoi
Appellant

vs

DLAMINI DR. BEN
Respondent In 21/97

MZIZI DR. JOSHUA
RESPONDENT IN 22/97

Appeal Case No. 21/1997 No. 22/1997

Coram

BROWDE, JA SCHREINER, JA LEON, JA

For Appellant
For Crown

JUDGMENT

BROWDE, JA

The two matters referred to in the above heading were heard together in the High Court. The appellant (the plaintiff in the Court a quo) applied for judgment by default as the respondents (the defendants in the Court a quo) had not given notice of intention to defend the action instituted against them. Sapire ACJ on the grounds dismissed the applications that the summonses did not disclose causes of action.

The claims arose from allegedly defamatory articles that were published in the Times of Swaziland which is a daily newspaper circulating in this country. The articles were published on the 16th February 1997 and 2 March 1997 respectively. In each case the defamation complained of is an extract from an article in the said newspaper. In the case against Dr. Ben Dlamini the words complained of were the following:-

"While Government was busy in this way, then comes members of the Swazi National Council Senanile Nkosi and Moimoi Masilela. They tell Maweni, the Minister of Justice that they bring a mandate saying the Union Leaders should be locked up".

I agree with Sapire, ACJ that the words are per se not defamatory nor do I think that they are susceptible to being understood to mean, as was pleaded by the appellant, that the appellant "misused his office and abused his public position". Even if, however, the words could possibly be so construed that does not avail the appellant. The onus is on the appellant to establish, on a balance of probabilities, that the defamatory meaning relied upon was the one which in the circumstance the ordinary reader of the Times of Swaziland would have given to the matter complained of.

Mr. Mdladla who appeared for the appellant reluctantly but correctly conceded that the circumstances which might have assisted the appellant were not pleaded. Consequently he was forced to rely on the words in the extracts only.

This onus is not discharged by showing that the meaning alleged is a possible meaning or that the matter complained of is capable of the meaning alleged (which is relevant if one is considering the matter an exception). The essential question is how a reasonable or ordinary reader with normal intelligence and development would have understood the publication relied upon.

Johnson v Rand Daily Mails 1928 AD 190

The test is an objective one and it seems to me that the learned Acting Chief Justice was correct in finding and that the words complained of do not, from the appellant's standpoint, fulfil the requirements for a valid cause of action.

The same applies in the case against Dr. Joshua Mzizi. In that declaration the words complained of are:-

"DPP - SFTU CIRCUS IS OVER

Then there was the revelation that two members of the Swazi National Council, a certain Moimoi Masilela and Mrs. Senanile Nkosi pressurised the Minister for

Justice,

Chief Maweni, to ensure the top leadership must be behind bars before February 3, 1997.
Chief

Maweni is said to have instructed the Attorney General to prepare the non-bailable offences under the Act and the draconian sentences crowned by a life sentence should anyone be found to have sabotaged essential services like water and electricity".

Whatever this extract may mean, and like Sapire ACJ I find it difficult to make sense of it, I do not think that the ordinary reader of the newspaper would regard the words complained of as bringing the appellant into disrepute. On the contrary, the ordinary reader may well argue that anyone who sabotages essential services like water and electricity should be imprisoned.

In my judgment the learned judge a quo cannot be faulted for refusing the applications for default judgment and the appeals should therefore be dismissed with costs.

J. BROWDE, JA

I AGREE

W.H.R. SCHREINER

AND SO DO I

R.N. LEON