

IN THE HIGH COURT OF SWAZILAND

HELD AT MBABANE

CIVIL CASE NO.279/93

In the matter between:

DONALD LUHLANGA

Plaintiff

and

EDITOR OF THE TIMES OF SWAZILAND
ECHO (PTY) LTD t/a THE TIMES OF
SWAZILAND

1st Defendant
2nd Defendant

FOR THE PLAINTIFF : MR. P.M. ZWANE
FOR THE DEFENDANTS : MR. H. CURRIE

JUDGMENT

25TH NOVEMBER 1994

The Times of Swaziland (the Times) of which the 1st defendant is the editor and the second defendant is the publisher has a daily circulation of about 90,000 copies per day. On the 5th May 1992 an article appeared on the front page of the Times under the heading "Government car 'sold in SA'". The article read as follows -

"A GOVERNMENT car belonging to the Ministry of Health which was illegally sold in South Africa has still not been returned despite police instruction.

The car, a 4x4 SG 003 PHE went missing early this year at the Mental hospital in Manzini.

The car was identified among nine cars, seven belonging to government, that had been recovered by the South African police.

The rest of the cars have since been returned after government sent a recovery team to South Africa to identify the cars.

It comprised officials from the Ministries where the cars belonged and police officers.

HEALTH

For the health car, government sent Mr. Donald Luhlanga, then administrator at the Mental hospital and Assistant Superintendent Cornelius Lukhele to identify the car.

However, while in South Africa, Mr. Luhlanga is alleged to have sold the car to a white South African citizen, promising that he (Luhlanga) would make arrangements with government.

This was confirmed by police PRO, Inspector Azaria Ndzimandze.

He said police moved in time to foil the attempt by Luhlanga and the matter was reported to the authorities at the Ministry of Health.

Inspector Ndzimandze said the delay in repatriating the car came about because the South African who bought the government car after it was illegally sold to him by Mr. Luhlanga told the police team that he had put a new engine in it.

ENGINE

Inspector Ndzimandze said the man was told that he must take off his engine and replace it with the original so that it can be repatriated, but this has still not happened.

Meanwhile Mr. Luhlanga has since been transferred to become transport officer in the Ministry of Health headquarters, replacing Mr. Poslid Simelane who has been transferred to the Ministry of Transport and Communications.

By last week, the South African had not changed the engine hence the car has not been returned.

Comments could not be obtained from the Ministry of Health."

The plaintiff is the Luhlanga referred to in the article. He is presently employed as an Immigration Officer in the Public Service but was the administrator of the Manzini

Mental hospital at the time of publication of the article. The plaintiff alleges that the article is false and defamatory of him. He claims payment of the sum of E50,000 together with interest and costs as damages for the defamation.

Publication of the article is not in dispute. The defence raised by the defendants is that the article was not defamatory alternatively that if the article is found to be prima facie defamatory the article was true and fair comment on a matter of public interest, for the public benefit.

The onus of establishing that the contents of the article were true and that its publication was in the public interest rests, in the circumstances, on the defendants. It can be stated at the outset that in discharging this onus it is not necessary for a defendant to prove the statement literally true in every detail; it is sufficient if he establishes that the statement is substantially true as a whole and in every material part thereof. See McKerron, *THE LAW OF DELICT* 7th Edition 186; Burchell, *THE LAW OF DEFAMATION IN SOUTH AFRICA* 218, 231 and the authorities there cited.

The plaintiff gave virtually unchallenged evidence of the circumstances surrounding the disappearance of the government vehicle bearing registration No. SG 003 PHE

from the Mental Hospital in Marzini and its subsequent identification by him in Rustenburg in the Republic of South Africa. The vehicle, a Toyota 4x4, had been purchased by a Mr. Ford from some undisclosed person in South Africa. Mr. Ford had effected considerable changes and improvement to the vehicle including a new engine. The plaintiff was nevertheless able to identify the vehicle as a government vehicle. It is common cause that the vehicle was still to be used as an exhibit in a criminal trial in South Africa and that some arrangements were to be made regarding Mr. Ford's improvements to the motor vehicle. It was the plaintiff's evidence that Mr. Ford expressed the wish to purchase the vehicle. The plaintiff explained that the vehicle belonged to the Swaziland Government and that its sale would have to be negotiated with the Government. It may well be that the plaintiff may have agreed to assist Mr. Ford in his attempts to purchase the vehicle.

Sergeant J. Dlamini of the Royal Swaziland Police was present when the plaintiff identified the motor vehicle. According to Dlamini who gave evidence for the defendants the vehicle was not sold to Mr. Ford. It was Dlamini's evidence that the plaintiff agreed to assist Mr. Ford in purchasing the vehicle. Dlamini told the court that he made it quite clear to Mr. Ford

and the plaintiff that the vehicle could only be sold by the Government. For some unexplained reason Dlamini stated that he reached the conclusion that the plaintiff was attempting, in his personal capacity, to dispose of the vehicle to Mr. Ford. There is nothing to substantiate this conclusion. The identification of the vehicle was made on or about the 26th February 1992. On the 28th February the plaintiff made a report of his trip to the Republic of South Africa and the identification of the vehicle to the Principal Secretary, Ministry of Health. The report, exhibit A, sets out in some detail all that had transpired at Rustenburg and in particular, the plaintiff's advices to Mr. Ford regarding the possible sale of the vehicle.

The article complained of has clearly been shown to be false and inaccurate. The plaintiff did not sell or attempt to sell any Government vehicle in South Africa. The editor of the Times, Gordon Mbuli gave evidence that the contents of the article were obtained from the police who he believed were investigating the matter and whose credibility he did not doubt. No attempt was made to contact the plaintiff before publication of the article. According to Mbuli when the plaintiff approached the Times about the article, the plaintiff indicated that he would institute an action against the

Times. On that basis the Times decided not to publish an apology or retraction and awaited a response from the police. The defendants have failed in my view to discharge the onus of establishing the defence they have raised. The article was clearly defamatory of and concerning the plaintiff. Mr. Currie for the defendants did not at the conclusion of the evidence seek to argue otherwise.

Turning to the question of quantum, the plaintiff was a hospital administrator at the time. He was ridiculed by his junior staff following publication of the article. He is a married man with children and he told the court that he was deeply hurt by the publication particularly as it related to government property over which he was responsible. An acquaintance of his, gave evidence of her reaction after reading the article. The Times enjoys a fairly wide readership in Swaziland. There was no attempt to retract the publication or at the very least to point out that the contents of the article were being challenged by the plaintiff. An explanation to the effect that the plaintiff was challenging the report and that the Times either stood by its story or had simply reported the story as given by the police would have gone a long way in lessening the sting that the publication had had. The attitude of the editor on learning of the

plaintiff's intended action was simply one of "go ahead! We will meet in court." This is a dangerous and high handed attitude which stands to be discouraged. It is not an easy matter for the man in the street to stand up to the might of the press. It is quite improper for the press to capitalise on this.

I have been referred to past awards of this court in defamation cases. In the unreported case of *NXUMALO v. African ECHO (PTY) LTD t/a THE TIMES OF SWAZILAND & 2 Others* Civil Case No. 778/86 an award of E10,000 was made following the publication of a false and defamatory story that the plaintiff a well known medical doctor had been charged and prosecuted for having stolen dogs in the Republic of South Africa. The facts and the standing of the plaintiff in that case were considerably different from the present case. I do not consider that the present case calls for an award in the region of Nxumalo's case. It must as was pointed out in *ARGUS PRINTING AND PUBLISHING CO. LTD. v. INKATHA FREEDOM PARTY* 1992(3) S.A. 587 at 590, be borne in mind that an action for defamation "had been seen as the method whereby a plaintiff vindicates his reputation, and not as a road to riches."

Doing the best I can in the circumstances of this case I consider that an award of E6,000 would be appropriate. Judgment is in the circumstances granted in

*favour of the plaintiff in the sum of E6,000 together
with interest at 9% p.a. from today's date to date
of payment and costs.*


B. DUNN
JUDGE