

THE HIGH COURT OF SWAZILAND
ZACHARIAH MKHONTA
Plaintiff

v

JEROME MATSEBULA
Defendant

Case No. 1512/99

Coram

For Plaintiff

For Defendant.

JUDGMENT

(29/09/99)

The Plaintiff, Zacharia Mkhonta, who describes himself as an adult male employed by the Royal Swaziland Police, and based at Matsapha Police College has sued a colleague Jerome Matsebula, described similarly as an adult male employed by the Royal Swaziland Police based at Matsapha Police College.

The cause of action as it emerges from the particulars of claim is defamation. The plaintiff alleges that on or about 17th March 1999 and at the Matsapha Police College the defendant maliciously and wrongfully uttered the

2

following words of and concerning the plaintiff: "Wena vele ungemasimba etinja, usittma". The translation of these words is alleged to be that the person addressed is dog excrement and an idiot. These words are said to have been uttered by the defendant to the plaintiff in the presence of Simelane and Gama who are also officers employed in the Royal Swaziland Police.

In paragraph five of the particulars of claim plaintiff alleges that the spoken words complained of used by the defendant are wrongful and defamatory of the plaintiff.

The particulars of claim further alleges that the statement was made with the intention of injuring the plaintiff's dignity and reputation in the eyes of those who were present. There is a further allegation which attributes an innuendo to words complained of and it is said that the words meant and were understood by those to whom the utterance was published to mean that the plaintiff was a person of diminished intelligence and not worthy of respect.

The plaintiff claims that as a result of the defamation he has been damaged in Ms good name and reputation as a Police Officer and has suffered damages in the sum of E30, 000.00. Lawful demand was made and payment has not been forthcoming.

The summons was issued in June this year and there is a return of service indicating that the summons with particulars of claim was personally served on the defendant on the 21st July, 1999. Notwithstanding personal service there has been no notice of intention to defend the matter which has come before me as an application for default judgment.

When the application was moved, the plaintiff's attorney called the plaintiff in evidence to testify in regard to both the publication of the defamatory matter and the damages allegedly suffered.

3

I questioned whether the words complained of are in fact defamatory and whether if they did constitute an actionable defamation whether an award even approximating the amount claimed by the plaintiff could be justified.

To be addressed in the manner alleged, especially in front of one's colleagues is no doubt insulting and injurious. I suspect that coarse and vulgar language like that complained of is not uncommon generally and at the Police College at Matsapha. Whether it is defamatory is another question. The plaintiff has not framed his claim as an action for damages for injuria but has confined himself to a claim for damages arising from impairment to his reputation.

There is a distinction in law between defamation and the other forms of injurious utterances. There are many cases where the same words may be both defamatory and insulting. Different considerations, however, would have applied having regard to the specific cause of action relied on. Vulgar abuse, although not defamatory of a person, can result in infringement of the addressed person's feelings of dignity. See *Bester vs Calitz*¹.

The words complained of in this instance are prima facie no more than vulgar abuse. No reasonable person could really believe or even imagine that the defendant was in the first place imputing that the plaintiff was in any way materially the same substance as dog's excrement. Similarly by the use of the word "idiot" the plaintiff did not intend the bystanders to believe or even think that the plaintiff was a person in a scientific sense, of impaired intelligence and mentality. The frequently used expletives "shit, dog shit or bull shit" have lost any primary meaning which they may have had and in their all too frequent use in common palates are merely expletive of a vulgar nature. The word idiot too is more often used as a term of abuse rather than in its scientific context. Language both in English and Siswati has come to include these and other terms, which are frequently

used. They reflect not as badly on the person to whom it is addressed as the person who uses them.

1 1982 (3) SA 874

4

Defamation is the unlawful publication with intent to injure of a statement concerning another person which has the effect of injuring that person in his reputation. A person's reputation is injured if a statement tends to lower him in estimation of the right thinking members of the society generally or if it tends to diminish the esteem with which he is held by others. It is of the essence of defamation that the words used and complained of diminish the reputation of a person not that they merely injure his feelings. Uncouth expressions of abuse, or coarse comments are not necessarily defamatory. They are for the most part meaningless, and do not lower the person to whom they refer in the estimation of right thinking members of society. Use of coarse and abusive language reflects poorly on the user thereof, but as in this case does not detract from the reputation of the person to whom they are addressed.

The conclusion to which I have come finds precedent and support in *Marruchi v Harris*²; and *Wood v Branson*³ In arguing the plaintiff's case a number of factors have been brought to my attention which as he said entitle the plaintiff to damages. The fact that the defendant is the plaintiff's superior is one of them and indeed one can readily appreciate that this sort of behavior of the superior to his subordinates cannot make for good discipline and indeed does not set an example of what is expected. This consideration does not make the words defamatory. This and like consideration do not assist the plaintiff. The plaintiff cannot succeed in the absence of allegations of special meaning of the words on the basis of claiming defamation. However insulting cause and uncouth the defendant's behaviour may have been.

I cannot accede to the plaintiff's application to enter a default judgment against the defendant.

SAPIRE, CJ 2 1943 OPD 15