

IN THE HIGH COURT OF SWAZILAND

HELD AT MBABANE

CASE NO. 1379/2005

In the matter between:

MAJOBLO LAWRENCE MNGOMEZULU

PLAINTIFF

and

COMMISSIONER OF CORRECTIONAL

SERVICES

1ST DEFENDANT

ATTORNEY GENERAL

2ND DEFENDANT

CORAM

: Q.M. MABUZA -J

FOR THE PLAINTIFF

: MR. B.J. SIMELANE

FOR THE DEFENDANTS

: MR. DLAMINI

RULING 28/11/08

[1] The Plaintiff herein issued summons against the Defendant on the 14/4/05 in which he claimed certain damages as a result of defamation published by an employee of the 1st Defendant a Mr. H.M. Dlamini in a memorandum dated 23/8/2002. The said Dlamini was acting during the course and within the scope of employment of the 1st Defendant and or Government of Swaziland. This memorandum was read by several people at his workplace.

[2] Consequently he has claimed:

(a) Payment against the Defendants in the sum of

E100,000.00

(b) Interest calculated at the rate of 9% p. a. a ***tempore morae.***

(b) Costs of suit.

(c) Any further and or alternative relief.

[3] He further states that notwithstanding demand in terms of the Limitations of actions against the Government Act 12/1972, Defendants fails, refuses or neglects to pay the sum of E 100,000.00

[4] The Defendants have raised a special plea the contents of which are as follows:

"1. Plaintiffs claim is prescribed and should be dismissed as

such in that:-

1.1 The Plaintiff has failed to file a demand with the Defendants

within ninety (90) days from the date on which the alleged debt became due as required by the Limitations of Proceedings Against the Government Act, 1972.

1.2 The Plaintiff¹ has further failed to institute legal proceedings against the Defendants within twenty-four (24) months from the date on which the alleged claim became due."

[5] The letter whose contents form the alleged defamation is dated the 23/8/2002. The Plaintiff only became aware of its contents on the 30th November 2004, whereupon he promptly served a letter of demand on the Defendants dated 30th November 2004. The Defendants admit receipt of such a letter. The Plaintiff in his replication states that he only became aware of the defamatory correspondence on the 30th November 2004. He issued summons on the 14/4/2005. I do not have a copy of the return of service but the notice of intention to defend is dated 29/6/2005 and was served on the Plaintiffs attorneys on the 30th June 2005.

[6] Mr. Dlamini for the Defendants has argued that prescription is reckoned from the date when the cause of action arose which is the 23/8/2002. Mr. Simelane argues that it is reckoned from the date when the Plaintiff became aware of the wrong. I agree with Mr. Simelane. The authorities support Mr. Simelane's

submissions. See the following extract by Joubert:

"Although generally a cause of action in delict arises when the wrongful act is committed or wrongful omission occurs, it is clear that there are deviations from the rule. The real issue is not whether prescription of debt arising from the Lex Aquilia begins to run when there a is culpable act or omission without any damages, but when damages arise to complete the cause of action it is only after damages have been suffered that the cause of action becomes complete and time begins to run". (My emphasis)

Lausa: Vol. 21 page 56 para 142.

This in my view is clearly one of these deviations and the special plea must fail.

[7] It is extremely risky to raise and rely on a special plea without pleading over on the merits. The opportunity to raise a good defence such as in this case is lost forever. For example it is possible that the Plaintiff sat on his laurels and made up the date when he became aware of the defamatory material for convenience. Had a defence on the merits been raised he could have been probed in cross-examination and the truth would have come out.

[8] There is equally a good defence on the merits as whether the publication among certain of his colleagues amounts to defamation per se or not. The opportunity which should have

been seized when it availed itself has passed. Once again award against the taxpayers money has to be made without a fight from the Respondents. This is totally unacceptable. Inasmuch as the Plaintiff has to still prove his damages, this job will be made easier because he will have no meaningful opposition.

[9] The special plea is dismissed with costs on the ordinary scale.

Q.M. MABUZA-J