

REPUBLIC OF SOUTH AFRICA



**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG**

CASE NO: 2003/25022

- (1) REPORTABLE: YES / NO
(2) OF INTEREST TO OTHER JUDGES: YES/NO
(3) REVISED.

.....
SIGNATURE

.....
DATE

In the matter between:

CARVALHO, FERNANDO DA LUZ

Plaintiff

And

GOMES, HERNANI RICARDO FAIM

Defendant

J U D G M E N T

MABASA AJ:

- [1] This is a claim for Default Judgment arising out of an action for damages due to defamation. The Plaintiff, a businessman, sues the First Defendant for defamatory statements published in The Citizen newspaper.
- [2] The editor of The Citizen newspaper and The Citizen 1978 (Pty) Ltd were cited as the Second and Third Defendants respectively. The application against these defendants has been withdrawn.
- [3] Ms Denichaud for Plaintiff informed the court that the First Defendant now lives in Portugal and that his attorneys have withdrawn as attorneys of record.
- [4] The cause of action arose on 1 July 2003 when the First Defendant published an article in The Citizen newspaper entitled to *'An open letter to the Portuguese community'*. In this article it was stated *inter alia* of the plaintiff that;
- 4.1 *"he is a person whom I would not be able to describe even if I had the use of the whole newspaper";*
- 4.2 *"due to the manipulations and delay raised by Mr Ferdinando Carvalho, a field in which he is a master";*
- 4.3 *"My last words are directed to Mr Carvalho, as a popular proverb,, and which he will easily understand 'you deceive everybody for a certain time, but you cannot deceive everybody forever'".*

- [5] The Plaintiff was the only witness who testified. The First Defendant was his former business partner. Both were members of World Roofing Technologies cc. ("WRT"). During 2002, allegations of misappropriation of money by the First Defendant surfaced.
- [6] The First Defendant brought an urgent application to liquidate WRT, which was opposed by the Plaintiff. The court found in favour of the Plaintiff and ordered a valuation of WRT. The Plaintiff was ordered to compensate the First Defendant for his share in the business. As a result, the business relationship between the parties broke down.
- [7] Subsequent to this, in an entirely unrelated matter WRT instituted legal proceedings against a client "Rusprof". The outcome of this litigation as well as the court orders was published as an explanation to the Portuguese community.
- [8] The First Defendant then published as a response the article which contained the defamatory allegation. In his Plea he avers that the First Defendant wanted to set the record straight by publishing the true state of affairs, which is in the public interest and which amounts to fair comment.
- [9] The plaintiff testified that he was a highly respected businessman in the Portuguese community. His reputation was severely tainted by the publication. His company offers a unique product and they have no

competitors. Immediately after this publication and he lost a deal of approximately R 3,000,000m. Business people in the community were of the view that they could no longer trust him. He tried to explain but the damage was done.

[10] He was also a prominent figure in the Portuguese social and cultural community. He constantly had to defend himself. As a result he felt threatened and withdrew from socialising. He even removed his sons from the soccer clubs. The relationship with his wife suffered and at one point he thought that she was going to divorce him.

[11] In closing argument Ms Denichaud submitted that the words in their ordinary meaning were clearly defamatory. It meant that the Plaintiff was dishonest in his business dealings, especially with members of the Portuguese community, that he is a master in manipulating and delaying tactics, and that he was a deceiver of people.

[12] The First Defendant who was informed of the legal proceedings chose to stay away at his peril. The facts are therefore uncontested.

[13] I am of the view that the publication was *prima facie* wrongful. In *Young v Shaikh* [2003] JOL 12113 (C) the court ordered the sum of hundred R150,000.00 as an award for an attack on the Plaintiff's integrity published on national television.

[14] The publication in the matter was in Portuguese and in reality limited to the Portuguese community in Johannesburg. Having regard to the reluctance of the courts to award huge amount as damages for defamatory statements I am of the view that an appropriate award would be R 200,000.00

[15] In the result I make the following order;

1. The First Defendant is ordered to pay to the Plaintiff the amount of R200,000.00;
2. It thereon at the rate of 15.5% per annum from the date of the service of the summons to the date of final payment, both dates inclusive;
3. Costs of the suit.

**NAME OF JUDGE AJ
ACTING JUDGE OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION,
JOHANNESBURG**

Counsel for the Plaintiff: Adv Denichaud

Instructed by: A J Van Rensburg Inc

Counsel for the Defendant:

Instructed by:

Date of Hearing: 06 June 2014

Date of Judgment: 12 June 2014