



IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)
REPUBLIC OF SOUTH AFRICA

CASE NO: 77082/2017

DELETE WHICHEVER IS NOT APPLICABLE

- (1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED: YES
DATE: 11 APRIL 2022
SIGNATURE: *N. JANSE VAN NIEUWENHUIZEN*

In the matter between:

CATHRINA BABY BOTHA

Plaintiff

and

**MEINTHIES VAN TONDER & BASSON
REGISTERED ACCOUNTANTS & AUDITORS**

Defendant

JUDGMENT

JANSE VAN NIEUWENHUIZEN J:

1. The plaintiff claims R 4 500 000, 00 from the defendant as damages she suffered due to defamatory statements the defendant published in respect of her.

Evidence

2. In summarising the evidence, I propose to only deal with the portions of the evidence that is relevant to the dispute between the parties.
3. The plaintiff, a certified financial officer and bookkeeper testified that she was appointed by the Gauteng Department of Education as an accountant at Prinshof School for the period 13 June 2013 to 31 December 2013. The appointment was a result of the retirement of the school's then accountant, Ms Patsie van der Westhuizen.
4. I pause to mention, that the appointment letter indicates that the plaintiff was appointed as an administrative assistant.
5. Be that as it may, the plaintiff testified that she has a vast knowledge of financial accounting and more specifically of the Pastel accounting system.
6. Subsequent to her appointment she worked with Ms van der Westhuizen in what could be termed as a hand-over period. Ms van der Westhuizen introduced the plaintiff to the school's accounting system and procedures.
7. The plaintiff testified that she immediately noticed various problems with the school's accounting system which led to numerous arguments between herself and Ms van der Westhuizen. The plaintiff was of the view that the pastel

accounting system was used incorrectly and that she could, with the application of her vast knowledge and experience, improve the accounting system.

8. The hand-over period was for three months and ended on 13 September 2013. On 27 November 2013, the plaintiff was appointed as the school's financial officer for the period 1 January 2014 to 31 March 2014. Thereafter, the plaintiff's contract was renewed for a second time for the period 1 April 2014 to 30 June 2014.
9. The defendant, a firm of registered accountants and auditors that traded at the time under the name Meintjies Van Tonder and Basson, was the school's external auditors.
10. On 13 March 2014 the defendant presented a memorandum of discussion points in respect of the school's financial statements to the school's governing body. The document consists of 7 pages and dealt with various financial queries in fifteen paragraphs.
11. In paragraph 16 of the discussion document under the heading, General, the defendant stated the following:

"Volgens ons mening is die gehalte en standaard van die skool se administrasie nie op dieselfde vlak as die vorige jare nie.

Ook is ons van mening dat dit toegeskryf kan word aan 'n nuwe rekenmeester wat nog nie met al die stelsels en skool prosedure vertrou is nie.

Derhalwe is ons verder avn mening dat as die rekenmeester bereid is om al die skool stelsels onder die knie te kry, die vlak en gehalte van die administrasie weer verhoog kan word." ("the statement")

[Loosely translated, the paragraph reads as follows:

"We are of the opinion that the quality and standard of the school's administration is not on the same level as previous years.

We are also of the opinion that it could be attributed to the new accountant that has not yet familiarised herself with the systems and the school's procedures.

In the result we are furthermore of the opinion that the level and quality of the administration could improve, if the accountant is willing to familiarise herself with all the school's systems."]

12. I pause to mention, that the plaintiff, in her particulars of claim, alleged three further occasions on which the defendant allegedly defamed her. The plaintiff, however, did not tender any evidence in support of these allegations.
13. The plaintiff alleges that the document in its totality is a false reflection of the school's financial accounts and that paragraph 16 quoted *supra* is defamatory of her.
14. The plaintiff prepared a document in response to the queries which she submitted to the school. In court the plaintiff presented financial records in respect of each and every query to support her allegation that the queries in the discussion document was not correct. I pause to mention, that the aim of the discussion document was to seek clarification in respect of certain entries in the financial records. It is not clear from the plaintiff's evidence what the outcome of her responses were.
15. In respect of paragraph 16, the plaintiff testified that the statement is *per se* defamatory of her *alternatively* meant that she was unfit to work as a financial

officer, that she was incompetent and needed more training to understand the financial operations of the school.

16. The plaintiff alleges that as a result of the document she was injured in her fair name and reputation and that she suffered damages.
17. The plaintiff testified that due to the defamatory statements, she was not permanently appointed by the Gauteng Department of Education as financial officer of the school.
18. In her particulars of claim, the plaintiff detailed the damages that she suffered as follows:

"15.1) The Plaintiff has, as a result of the abovementioned facts, suffered damages in the amount of R 3 000 000. Being inter alia:

- a) Loss of income for 6 years.*
- b) Loss of medical aid.*
- c) Loss of housing allowance.*
- d) Costs at the CCMA/Labour courts to fight the unfair dismissal/automatically unfair dismissal.*
- e) Unfair blacklisting by bank due to no income to pay bond.*
- f) Costs at the High Court in pursuit to keep the roof over Plaintiff's head in terms of Section 26 of the Constitution.*
- g) General inconvenience of life-insurance policies lapsed due to loss of income.*
- h) Mental anguish.*

i) *My general patrimony has been diminished by approximately R 3 000 000. 00 by the false and malicious audit report/statements that the Defendant has made and published since the 14th March 2014.*"

19. The plaintiff, furthermore, claimed R 1 500 000, 00 as "appropriate relief in terms of Section 38 of Act 108 of 1996..., in addition to the compensatory damages ... punitive Constitutional damages of R 1 500 000, 00, alternatively punitive damages of R 1 500 000, 00 under the common law of delict developed to promote the spirit, purport and objects of the Bill of Rights.
20. During cross-examination it emerged that the plaintiff had encountered several problems with the management of the school in respect of her performance as the financial officer. The plaintiff was referred to the minutes of a meeting of the financial committee held on 22 April 2014.
21. In paragraph 7 financial matters were discussed and the following appears from the minutes:

"7.1.1 Financial statements:

Ms C Botha could not present the financial statements for January 2014.

Dates for financial deadlines were discussed with Ms C Botha.

7.1.2 The FC expressed their concern that no financial accounts have been given to learners. Ms C Botha committed herself that learners will receive accounts on Friday, 25 April 2014.

7.1.3 Financial assistance

Various amounts indicated for exemption of school fees submitted by Ms C Botha were incorrect. Ms C Botha was requested to correct the statistics.

..

7.1.8 *Due to late payments of the Telkom account reconnection fees of R 2 800, 00 had to be paid. Mr J van der Schyff stated that this financial practice is unacceptable. Ms C Botha could not explain the reasons for the late payments."*

23. The plaintiff stated that the items reflected *supra* were never discussed at the meeting and that the minutes were a fraud.
24. Several further correspondence was addressed to the plaintiff in respect of work that was late or was not properly done.
25. The plaintiff was referred to a letter dated 30 May 2014 from the Vice Chairperson of the Governing Body Prinshof School in terms of which she was informed that her contract will not be extended after 30 June 2014. It was put to the plaintiff that the school decided not to renew her contract and that the defendant had nothing to do with the decision. The plaintiff persisted with her allegation that the discussion document prepared by the defendant was the sole reason that she was not permanently appointed.
26. It was pointed out to the plaintiff that she was only appointed on a temporary basis and that no evidence was presented that a permanent appointment was imminent. The plaintiff answered that she had an expectation to be appointed permanently.
27. The plaintiff was referred to the judgment of the Labour Court pertaining to an application that was brought by the applicant against The Gauteng Department

of Education (first respondent) and Prinshof school (the second respondent. The relevant passages for present purposes read as follows:

“[3] According to its Statement of Defence, the school asked the First Respondent not to renew the contract on the basis of poor performance and a breakdown in the relationship between the A plaintiff and the SGB.”

[4] In essence she pleaded that her contract was not renewed because she lodged a grievance against the school alleging various unfair labour practices and discrimination against her and had disclosed to the First Respondent that the school and its SGB had committed various acts of financial misconduct.”

28. The plaintiff did not meaningfully engage with the contents of the judgment. The plaintiff's claim was dismissed in the Labour Court.
29. The defendant closed its case without leading any evidence.

Legal principles

30. In order to succeed in her claim for defamation, the plaintiff needs to establish the following:
 - 30.1 the terms of the statement;
 - 30.2 wrongfulness;
 - 30.3 publication;

- 30.4 reference to the plaintiff;
- 30.5 defamatory nature of statement or innuendo; and
- 30.6 *animus iniuriandi*, and
- 30.7 damages.

[See: *Amler's Precedents of Pleading*, Harms, 7th edition, p 160]

- 31. The terms of the statement, its publication and the fact that it referred to the plaintiff is not in dispute.
- 32. The next question is whether the statement is defamatory *alternatively* whether the plaintiff has established an innuendo of a defamatory nature.
- 33. Mr Heyns SC, counsel for the defendant, referred to the following paragraphs in *Sindani v Van der Merwe and Others* 2002 (2) SA 32 SCA in respect of the test to be applied in establishing whether the statement is defamatory:

"[10] The question whether the article is defamatory in its ordinary meaning, involves a two-stage enquiry. The first is to establish the natural or ordinary meaning of the article. The second is whatever that meaning is defamatory. (See, for example, SA Associated Newspapers Ltd en 'n Ander v Samuels 1980 (1) SA 24 (A) at 30F - G.)

[11] The ordinary meaning of the words under consideration does not necessarily correspond with their dictionary meaning. The test to be applied is an objective one, namely what meaning the reasonable reader of ordinary intelligence would attribute to the words read in the context of the article as a whole. In applying this test it must be accepted that the reasonable reader will not take account only of

what the words expressly say but also what they imply (see, for example, Argus Printing and Publishing Co Ltd and Others v Esselen's Estate 1994 (2) SA 1 (A) at 20F - G). It must also be borne in mind that the ordinary reader has no legal training or other special discipline and that

'if he read the article at all would be likely to skim through it casually and not to give it concentrated attention or a second reading. It is no part of his work to read this article, nor does he have to base any practical decision on what he reads there'

(per Lord Pearson in Morgan v Odhams Press Ltd and Another [1971] 2 All ER 1156 (HL) at 1184). Consequently, a court that has of necessity subjected a newspaper article under consideration to a close analysis must guard against the danger of considering itself to be 'the ordinary reader' of that article (see also Ngcobo v Shembe and Others 1983 (4) SA 66 (D) at 71C - D)."

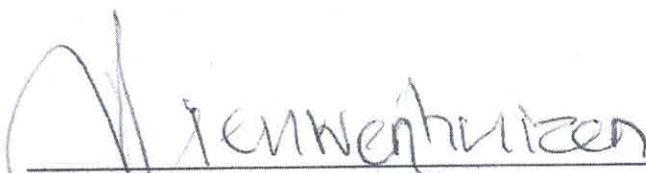
34. Applying the aforesaid test to the facts in *casu*, the ordinary reader of the statement was the members of the School Governing Body. The discussion points in each of the fifteen categories pertained to aspects that were either incorrectly reflected in the financial records or which were not clear to the defendant.
35. One can accept, that the discussion document is a necessary step in enabling the defendant, in its capacity as the external auditors of the school, to fulfil its duties properly and professionally.
36. In view of the aforesaid context, the question should then be asked whether objectively viewed, the ordinary reader would consider the general remarks at the end of the discussion document defamatory of the plaintiff.

37. The view expressed by the defendant that the quality and standard of the school's administration is not on the same level as previous years, is a remark based on the defendant's previous experience, as a professional auditor firm, of the quality of the school's administration.
38. The observation is not *per se* defamatory of the plaintiff.
39. The remarks that follow the aforesaid observation, removes any resemblance of an insult or injury aimed at the plaintiff. The defendant acknowledges the fact that the plaintiff has only been appointed in her position recently and suggests that a more in-depth knowledge of the school systems would improve the quality of the administration of the school.
40. It is not uncommon that newly appointed employees, whatever their level of experience is, will need to acquaint himself / herself with the logistics of each new working environment. The statement, read in context, is not defamatory of the plaintiff.
41. In the result, the plaintiff has failed to prove on a balance of probabilities that the statement is defamatory, and it is not necessary to have regard to the remainder of the requirements pertaining to an action based on the *action iniuriarum*.

Order

42. The following order is made:

The action is dismissed with costs.



N. JANSE VAN NIEUWENHUIZEN
JUDGE OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

DATE HEARD PER COVID19 DIRECTIVES: 09 March 2022

DATE DELIVERED PER COVID19 DIRECTIVES: 11 April 2022

APPEARANCES

Counsel for the plaintiff

In Person

Counsel for the respondents:

Advocate Heyns SC

Instructed by:

Clyde & Co