

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

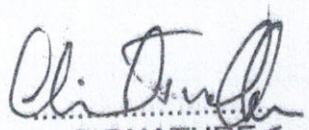
CASE NO: 68142/2016

In the matter between:

SAMUEL MOAGI MANGENA

Plaintiff

and

(1)	<u>REPORTABLE:</u>	<u>YES / NO</u>
(2)	<u>OF INTEREST TO OTHER JUDGES:</u>	<u>YES / NO</u>
<u>27/05/19</u> DATE		 SIGNATURE

INDEPENDENT NEWSPAPERS (PTY) LIMITED

First Defendant

VAL BOJE

Second Defendant

KEVIN RITCHIE

Third Defendant

JUDGMENT

Tuchten J:

- 1 This is a defamation action. The plaintiff seeks compensation for damage to his reputation.
- 2 The plaintiff is the principal of a secondary school (the school) in Atteridgeville, Pretoria. The plaintiff, born in 1955, has lived his whole life in Atteridgeville. He began teaching at the school in 1981. He was

appointed deputy principal in 1991 and principal of the school in 2001. The school maintains high standards, so much so that the plaintiff was seconded to another school for a period to help that school improve its standards. The plaintiff is a member of the SA Council of Educators and must comply with the standards of that body, which sets standards for educators in South Africa.

- 3 The plaintiff has an interest in and teaches judo, karate and aerobics. He gives extra lessons. He is a member of a Catholic church congregation, where he is and was at the time relevant to this action in charge of the male church choir.
- 4 The plaintiff is and was at the relevant time the secretary of a civic association concerned with the affairs of Ward 51, one of the municipal wards in Atteridgeville in the Tshwane Metropolitan Municipal Council.
- 5 The plaintiff is well known in his community, both by sight and personally. He is held in high esteem in his community. Indeed, in my view, the plaintiff is a pillar of the community and a role model for all.

- 6 The first defendant is the publisher of a number of newspapers, including the Pretoria News and the Star. These newspapers are published daily in print form and are also accessible electronically on <http://www.iol.co.za> (IOL). The second and third defendants are, respectively, the editors of the Pretoria News and the Star. It is not in dispute that the first and second defendants are, in the present context, jointly and severally liable for what is published in the Pretoria News and that the first and third defendants are similarly liable for what is published in the Star.
- 7 On the morning of Friday 11 September 2015, the plaintiff went to school as usual. He took assembly. Nothing untoward occurred. He returned to his office. His telephone began to ring. He received several calls from persons whom he knew asking whether he had read the Pretoria News for that day.
- 8 The plaintiff had not read the Pretoria News for that day. He then did so and found that it contained, on page 3 of its print edition, a report under the heading

'Sorry for courting a schoolgirl'

Councillor rues romantic fling

9 The report in the Pretoria News consisted of text and an associated image of the plaintiff. The text related to a councillor for Ward 51, whom the report named and who, the report said, regretted the embarrassment which his, the councillor's, romantic relationship with a "minor schoolgirl" had caused "his party ... , the City of Tshwane and his family". The text of the report went into a good deal of detail . It referred to two photographs of the councillor and the schoolgirl which had "been doing the rounds on social media platforms ...". One of these photographs was said to have showed the councillor and the child "locked in a passionate kiss" while the child appeared to have been "topless" except for a "blue bra". The child was described as being "light-skinned", which, the article said, was at the present time called "yellow-boned".

10 The text of the report took up two columns of print and about two thirds of the length of page three of the print edition of the Pretoria News. The editorial staff of the Pretoria News decided not to publish the image they had which depicted the embrace described in the text. The text published was wrapped around another image which the Pretoria News believed they had of the councillor. This image was of an adult man. The Pretoria News gave this image a caption. The caption gave the name of the man in the image as the councillor whose conduct was the subject of the text in the report. The same

material was uploaded on the same day, Friday 11 September 2015 to the online edition of the Pretoria News.

- 11 But the image in question was not that of the councillor. It was an image of the plaintiff.
- 12 The Star newspaper is in the same stable as the Pretoria News. There is a group policy whereby sister publications may access each other's material and, in their discretion, print it in their own newspapers. The third defendant, as editor of the Star, decided to run the report about the councillor in the print edition of the Star on Friday 11 September 2015, and did so. The Star, however, decided to use two images its editorial staff believed were relevant to the report in the text. These images were that of the couple in the embrace, with the features of the female participant obscured by pixilation, and that of the plaintiff which was erroneously believed to be that of the councillor.
- 13 IOL published the text of the article which appeared in the two print newspapers and the image of the plaintiff, erroneously believed to be that of the councillor. IOL did not publish the image of the embrace.

- 14 The plaintiff described how the reports upset him. He was concerned about his reputation. I was able to observe the plaintiff in the witness box. He made a good impression on me. I am certain that his concern for the damage the reports might cause to his reputation arose predominantly not from vanity but from a fear that if his standing in the community were tarnished, his ability to continue the good work that had been so significant a part of his life would be impaired.
- 15 The evidence showed that at that time, the actions of men described colloquially as "blessers" were the subject of intense public debate and scrutiny. A blesser is a middle-aged or older man who provides a younger woman, or girl, with material benefits in return for sexual favours. I think that in other cultures, blessers are known as sugar daddies.
- 16 The plaintiff was concerned that if he, a middle-aged man who stood *in loco parentis* to many young people, were identified as a blesser, considerable damage to his reputation would ensue.
- 17 The editorial staff of the Pretoria News accepted on the Friday, the same day the initial report was published, that their image had depicted the wrong man. They reacted swiftly to mitigate the damage. The Pretoria News' news editor, Mr Kennedy Mudzuli, telephoned the

plaintiff on the Friday to apologise and followed up his phone call with an email on the same day conveying the apologies of the Pretoria News. The image of the plaintiff was immediately removed from the online edition. The earliest the Pretoria News could set the print record straight was the following day, Saturday, 12 September 2015.

- 18 The Saturday edition of the Pretoria News carried on page three, the same page on which had appeared the image of the plaintiff, a report titled

Wrong picture published in error

- 19 The correction report published in the Pretoria News stated that the image of the plaintiff had been used in error and that the man in the embrace image had not been the plaintiff, who the report identified by name and described as a "prominent Atteridgeville resident and school principal". The text of the correction report concluded:

The editor and staff of the Pretoria News regret this error and hereby unreservedly apologise to [the plaintiff's] family, relatives and associates for this error.

- 20 Above the correction report, the Pretoria News published two images: the image of the plaintiff which had been erroneously used in the report in the Friday edition, but with a caption correctly describing the subject of the image as the plaintiff and an image of the allegedly errant councillor, with a caption giving his name.
- 21 The correction report was given less prominence than the original report. Its headline, which I quoted above, was quite considerably smaller than the headline to the original report. The correction report was published at the bottom of the page, rather than on the top of the page.
- 22 The impression given by the correction report, when read together with the initial article, is that the correction was of less importance than the original scandalous and somewhat salacious report.
- 23 The evidence does not suggest that the Star or IOL carried any correction report or that the Star or IOL ever apologised for the error in publishing the image of the plaintiff in association with the text of the report.

- 24 On 13 September 2015, the plaintiff attended the Sunday service at his church in Atteridgeville. At the appropriate time during the service, the plaintiff went to take communion. He observed that congregants were looking at him askance. He concluded that they were doing so because they considered that the plaintiff ought not to have taken communion without first confessing, according to the practice of his church, the sin they attributed to the plaintiff as described in the initial report.
- 25 On the Monday after the initial report, ie on 14 September 2015, the plaintiff took assembly at school. He saw that learners were giggling and attributed their conduct to the report. He was obliged to undertake what he described as damage control. He felt weak and embarrassed and that the standards which he had lived and worked to uphold were compromised.
- 26 One of the people who telephoned the plaintiff pursuant to the image in the initial report was the chair of the school governing body, a body on which parents, learners and staff were represented and which plays a significant role in the administration of the school. The chair of this body asked the plaintiff for an explanation.

- 27 The error which resulted in the publication of the plaintiff's image in relation to the initial report came about because the Pretoria News night editor, Mr Jos Charle, decided that it would be inappropriate to use the embrace image or the other image they had which apparently depicted the councillor and the child because they contained images of the child. The night editor thought that the use of these images would convey a message that the child was to blame for what had happened.
- 28 The news editor of the Pretoria News then looked for an alternative image depicting the allegedly errant councillor. Instead of contacting the man himself, he contacted a representative of the councillor's political party, whom he also asked to verify the contents of the report. The party representative had no issue with the text of the then proposed report but had no image of the councillor on file.
- 29 The Pretoria News news editor searched the first defendant's own image archive but could not identify an image of the councillor. He then searched on the Internet and came up with an image on the Atteridgeville community Facebook page. There he found an image of a former Minister of Science and Technology taken together with a man identified on the community Facebook page as the councillor.

- 30 But in fact the community Facebook page wrongly identified the man with the minister as the councillor. The man with the minister was the plaintiff and the image had been captured at a function at the school held to celebrate Mandela Day.
- 31 The Pretoria News news editor scrutinised the Facebook image and compared it with the embrace image. He and other members of the Pretoria News editorial staff came to the conclusion that the man in the Facebook image and the man in the embrace image were one and the same. But, as we have seen, they were wrong.
- 32 The Pretoria News news editor conceded in evidence that if he had submitted the Facebook image to the party representative, the party representative would probably have alerted the news editor to the Facebook captioning error, in which case the error would have been averted and the plaintiff's image would not have been associated with the conduct ascribed by the text of the initial report to the councillor.
- 33 I need not analyse the defendants' plea because counsel for the defendants submitted that four issues arose for decision in this case.¹ I shall focus my attention on these issues. They are:

¹ A special plea of a technical nature was filed by the defendants but not relied upon in argument.

- 33.1 Are the publications in the three platforms concerned defamatory of the plaintiff?
- 33.2 If the publications were defamatory of the plaintiff, have the defendants established that they had reasonable justification for the publications?
- 33.3 If the publications were defamatory of the plaintiff and reasonable justification is not established, has the plaintiff suffered any diminution of his reputation?
- 33.4 If all these questions are answered in favour of the plaintiff, what is the quantum of damages which should be awarded to the plaintiff?

Defamation

- 34 The starting point is to examine the publication complained of to establish whether or not it conveys the defamatory meaning which the plaintiff seeks to place upon it. In *Independent Newspapers Ltd and others v Suliman*,² the SCA held as follows:

² [2004] 3 All SA 137 SCA paras 19 and 20. Internal footnotes omitted in all quotations in this judgment

- [19] In answering that question a court discards its judicial robes and the professional habit of analysing and interpreting statutes and contracts in accordance with long established principles. Instead it dons the garb and adopts the mindset of the reasonable lay citizen and interprets the words, and draws the inferences which they suggest, as such a person would do. It follows that meticulous attention to detail, an alertness to and awareness of the subtle nuances in meaning of words, a full appreciation of the influence of context, and a reluctance to draw inferences when they are not soundly based and fully justifiable and amount to no more than speculation, cannot be expected. The law reports are replete with reminders of the looseness of thought and low level of concentration with which even an eminently reasonable member of society may read newspaper reports.
- [20] Yet there must be a limit to the allowances which a court should make in a claimant's favour when engaged in the notional exercise postulated. A defamatory meaning should not be attributed to an isolated part of a newspaper report if the rest of the report would show that it is not justified. A claimant should not be permitted to base his case upon the reaction of readers who do not bother to read the whole of the article even although a part of it has attracted their attention precisely because of its potential to lower the esteem in which society holds him. In saying this I am aware that judges have drawn attention to the propensity of readers to 'skim' reports in newspapers but I do not understand that to mean that they must be taken to have entirely ignored everything in a report which they skim, other

than that part or those parts of it which, if viewed in isolation, would constitute defamatory material. Why should the writer or publisher of an article the whole of which is intended to be read and, if read, would plainly not be defamatory be held liable for defamation because there may have been lazy or careless readers who chose to focus only upon a particular sentence in it.

- 35 In *Le Roux and Others v Dey (Freedom of Expression Institute and Restorative Justice Centre as Amici Curiae)*,³ Brand AJ, writing for the majority, expressed himself as follows:

[89] Where the plaintiff is content to rely on the proposition that the published statement is defamatory per se, a two-stage enquiry is brought to bear. The first is to establish the ordinary meaning of the statement. The second is whether that meaning is defamatory. In establishing the ordinary meaning, the court is not concerned with the meaning which the maker of the statement intended to convey. Nor is it concerned with the meaning given to it by the persons to whom it was published, whether or not they believed it to be true, or whether or not they then thought less of the plaintiff. The test to be applied is an objective one. In accordance with this objective test the criterion is what meaning the reasonable reader of ordinary intelligence would attribute to the statement. In applying this test it is accepted that the

reasonable reader would understand the statement in its context and that he or she would have had regard not only to what is expressly stated but also to what is implied.

[90] The reasonable reader or observer is thus a legal construct of an individual utilised by the court to establish meaning. Because the test is objective, a court may not hear evidence of the sense in which the statement was understood by the actual reader or observer of the statement or publication in question.

[91] At the second stage, that is whether the meaning thus established is defamatory, our courts accept that a statement is defamatory of a plaintiff if it is likely to injure the good esteem in which he or she is held by the reasonable or average person to whom it had been published.

36 Brand AJ went on to observe:⁴

Because we are employing the legal construct of the 'reasonable', 'average' or 'ordinary' person, the question is whether the statement was 'calculated [in the sense of likelihood] to expose a person to hatred, contempt or ridicule'. Evidence of whether the actual observer actually thought less of the plaintiff is therefore not admissible. The test is whether it is more likely, that it is more probable than not, that the statement will harm the plaintiff.

- 37 In the present case, the defendants' motive was not to defame the plaintiff but to bring to light the admitted and reprehensible conduct of the councillor. Does this make a difference? I do not think it does. As Brand AJ observed in *Le Roux*:⁵ "... [In] our law motive does not necessarily correlate with intent."
- 38 A case in which the facts were similar to the present situation is *Hassen v Post Newspapers (Pty) Ltd and Others*.⁶ In that case the plaintiff's image was in error inserted in a newspaper article. The article was about a notorious man, one Lord Latib, who was awaiting trial on a serious charge and the newspaper wanted to publish an image of Mr Latib in association with the text of the article. The court, per Colman J, concluded that there were people in whose minds the notoriety was likely to attach to the plaintiff by reason of the publication of the plaintiff's image rather than that of Mr Latib.
- 39 In *Hassen v Post*, the defendant denied that the erroneous publication of the image of the plaintiff was defamatory. Colman J dealt with that denial as follows:⁷

⁵ Para131

⁶ 1965 3 SA 562 W

⁷ At p564

That denial poses, firstly, the question of identification, and in that regard I have this to say: Although the plaintiff has no facial peculiarities, he has well-marked and fairly distinctive features. And those features appeared in the photograph clearly enough to enable him to be recognised there by anyone who knew him by sight. In spite of that, the photograph would not have misled anyone who knew Lord Latib by sight, or anyone who knew the plaintiff well enough to be satisfied that he was not Lord Latib and that there was therefore an error in the caption. But there remain three classes of persons who could have been misled. They consist of:

- (a) persons who knew the plaintiff by sight, but not by name, and who did not know what Lord Latib looked like;
- (b) persons who did not know what Lord Latib looked like and who, although they knew the plaintiff by his own name, were open to the suggestion that he also went by the name of Lord Latib; and
- (c) persons who did not know Lord Latib or the plaintiff by sight, but who might subsequently meet him and recognise him as the person who had appeared in a Press photograph where he was identified as Lord Latib.

40 On that analysis, the learned judge concluded, there was a publication in consequence of which the plaintiff could have been identified, then or later, as the man who was said to have been charged with the serious crime. And that it could hardly be doubted that this was defamatory of the plaintiff.

- 41 *Hassen v Post* was decided more than fifty years ago and has been frequently referred to, in some instances with approval. It has never been overruled or departed from in this country. The principle I extract from *Hassen v Post* is that (a) where an image of the plaintiff is published in a newspaper under the error that the image is that of another person (b) said in text associated with the image to be a person whose conduct should attract opprobrium - ie a wrongdoer or alleged wrongdoer - (c) will be defamatory of the plaintiff (d) when the evidence shows that the plaintiff could have been identified as the wrongdoer.
- 42 I am bound by *Hassen v Post* unless I am satisfied that it is clearly wrong. Counsel for the defendants submitted that the case should be treated as diminished in precedent value because of the changes in the law of defamation in the period since it was decided. I disagree. The logic of the reasoning of Colman J appears to me, with respect to the memory of the learned judge, as lucid and timely today as when the case was decided.
- 43 In the present case, the publication of the image of the plaintiff meant that classes of persons could have been identified as the man whom the publications claimed had had a relationship with a schoolgirl. This is, in my view, defamatory.

44 In the present case, there is no suggestion that the plaintiff might be identified as going by the name of the councillor and category (b) in *Hassen v Post* does not apply. But there is no doubt that the plaintiff comes within categories (a) and (c). It is not in dispute that the image in question was clear enough to enable the identification considered by Colman J to be made.

45 In my view, there is a further class of persons in whose eyes the plaintiff was likely to have been diminished in reputation by the publication of the plaintiff's image: the learners at the school. For reasons which I shall enlarge upon below, in relation to this class, it was not even necessary for the members of the class to believe that their principal was guilty of the deplorable conduct attributed in the article to the councillor. There is a certain tension that exists between a school principal and the learners to whom he or she stands *in loco parentis*. The objective likelihood is that a substantial number of the members of this class would seek to use the fact of the report to undermine the authority which a school principal must have to get the job done.

46 The defamation is therefore established.

Reasonable publication

- 47 This is often called in our case law the *Bogoshi* defence, dealt with for the first time in detail in *National Media Ltd and Others v Bogoshi*.⁸
The SCA held in *Bogoshi*:⁹

It has been said ... that the criterion of unlawfulness must be the legal convictions in South Africa and not elsewhere. But the solution of the problem in England, Australia and the Netherlands seems to me to be entirely suitable and acceptable in South Africa. In my judgment we must adopt this approach by stating that the publication in the press of false defamatory allegations of fact will not be regarded as unlawful if, upon a consideration of all the circumstances of the case, it is found to have been reasonable to publish the particular facts in the particular way and at the particular time.

In considering the reasonableness of the publication account must obviously be taken of the nature, extent and tone of the allegations. We know, for instance, that greater latitude is usually allowed in respect of political discussion ... and that the tone in which a newspaper article is written, or the way in which it is presented, sometimes provides additional, and perhaps unnecessary, sting. What will also figure prominently is the nature of the information on which the allegations were based and the reliability of their source, as well as the steps taken to verify the information. Ultimately there can be no justification for the publication of untruths, and members of

⁸ 1998 4 SA 1196 SCA

⁹ At 1214-5

the press should not be left with the impression that they have a licence to lower the standards of care which must be observed before defamatory matter is published in a newspaper. ... [A] high degree of circumspection must be expected of editors and their editorial staff on account of the nature of their occupation; particularly, I would add, in light of the powerful position of the press and the credibility which it enjoys amongst large sections of the community.

And:¹⁰

Defendants' counsel, rightly in my view, accepted that there are compelling reasons for holding that the media should not be treated on the same footing as ordinary members of the public by permitting them to rely on the absence of animus injuriandi, and that it would be appropriate to hold media defendants liable unless they were not negligent in the circumstances of the case.

48 Finally, in regard to the *Bogoshi* defence:¹¹

Bearing in mind that the evidence relating to negligence may well be intertwined with evidence on some other issue, it is unrealistic to expect the plaintiff to prove some of the facts and the defendant to prove others. In my judgment it is for the defendant to prove all the facts on which he relies to show that the publication was reasonable and that he was

¹⁰ At 1214

¹¹ At 1215

not negligent. Proof of reasonableness will usually (if not inevitably) be proof of lack of negligence.

- 49 It seems to me that in publishing the article, the defendants had several purposes in mind. The first, entirely laudable, purpose was to draw public attention to an abusive relationship which, according to the text in the article, a public figure had with a schoolgirl and which the same public figure said he regretted.
- 50 But there was another purpose, which was lawful but not quite so laudable: to titillate the public. I can see no other reason why the article should have referred to skin colour of the child or the fact that the image in the possession of the news platform in question showed that the schoolgirl was embracing the councillor while wearing only a blue undergarment on her upper body. Nor can I see any other reason for reporting the alleged *ipsissima verba* of this abused girl, where she had apparently declared defiantly in a social media posting that she loved the councillor and, in effect, that she felt that her dignity was intact despite public discussion of her interactions with the councillor. I could give more examples. But these are enough.
- 51 With these considerations in mind, the defendants were required to take quite considerable care to ensure that the wrong man was not associated with the misconduct with they were exposing. Misconduct

of this kind, between socially dominant men and vulnerable girls is rightly regarded in this country as particularly heinous. Indeed, there is good reason to believe that while the public appear more indulgent of the conduct of those in public positions who lie and peculate, the public are generally most critical of the conduct, or alleged conduct, of socially dominant men towards girls.

- 52 The test for the type of care the defendants ought to have taken was authoritatively stated in *Kruger v Coetzee*:¹²

For the purposes of liability culpa arises if -

- (a) a *diligens paterfamilias* in the position of the defendant -
 - (i) would foresee the reasonable possibility of his conduct injuring another in his person or property and causing him patrimonial loss; and
 - (ii) would take reasonable steps to guard against such occurrence; and
- (b) the defendant failed to take such steps.

This has been constantly stated by this Court for some 50 years. Requirement (a) (ii) is sometimes overlooked. Whether a *diligens paterfamilias* in the position of the person concerned would take any guarding steps at all and, if so, what steps would be reasonable, must always depend upon the particular circumstances of each case. No hard and fast basis can be laid down. Hence the futility, in general, of seeking guidance from the facts and results of other cases.

53 And in *Herschel v Mrupe*,¹³ it was held:

No doubt there are many cases where once harm is foreseen it must be obvious to the reasonable man that he ought to take appropriate avoiding action. But the circumstances may be such that a reasonable man would foresee the possibility of harm but would nevertheless consider that the slighness of the chance that the risk would turn into actual harm, correlated with the probable lack of seriousness if it did, would require no precautionary action on his part. Apart from the cost or difficulty of taking precautions, which may be a factor to be considered by the reasonable man, there are two variables, the seriousness of the harm and the chances of its happening. If the harm would probably be serious if it happened the reasonable man would guard against it unless the chances of its happening were very slight. If, on the other hand, the harm, if it happened, would probably be trivial the reasonable man might not guard against it even if the chances of its happening were fair or substantial.

54 The present is a case in which, I was at pains to point out, the harm which might flow from a mistaken identification of the alleged wrongdoer, a risk which ought manifestly to have been appreciated by the defendants, was very grave.

- 55 The case for the defendants was that the editorial staff of the Pretoria News indeed appreciated the risk and concluded that their image was that of the right man. In coming to this conclusion, they relied, firstly, on the source of their information: an Atteridgeville community Facebook page and, secondly, their own personal comparison of the image they obtained from the Atteridgeville community Facebook page with the image of the councillor in the image depicting the passionate embrace.
- 56 The impression I got from the evidence is that the editorial staff of the Pretoria News regarded the material they got from the Atteridgeville Facebook page as highly reliable; so much so that further checking of the material, other than their own considered conclusions reached after comparing the two images in their possession, was unnecessary.
- 57 I disagree. The material on social media sites is often the product of gossip and worse. The participants in a conversation through any social media platform, of which Facebook is one, are under no duty or even pressure to supply accurate information. Facebook is not a repository of record, like the records of a public body. It is merely a vehicle for chatter; a more or less useful source of potential information, generally requiring verification from more reliable sources.

- 58 The evidence is clear that if the Pretoria News editorial staff had taken the elementary step of checking with the party official with whom its news editor was in regular contact, the mistake would probably have been avoided. To communicate the concern about the identity of the person in the image of the plaintiff, all that was required was two clicks of a mouse button: one to associate the image with an email to the party official and another to send the image to the official with an appropriate enquiry.
- 59 It follows, applying the tests in *Kruger v Coetzee* and *Herschel v Mrupe*, that by not making the enquiry of the party official, the Pretoria News editorial staff were negligent. The *Bogoshi* defence must fail.
- 60 The first defendant is therefore liable for all the damages suffered by the plaintiff. The second defendant is jointly and severally liable with the first defendant for the damages arising from the publication in the Pretoria News. The third defendant is jointly and severally liable with the first defendant for the damages arising from the publication in the Star.

Diminution of the plaintiff's reputation

- 61 Counsel for the defendant submitted that if the reputation of the plaintiff was damaged, it was to a negligible extent. I do not agree. Those who knew the plaintiff, read the apology in the Pretoria News and were of a mind to weigh up the evidence on the question fairly no doubt came to appreciate that the plaintiff was not guilty of the conduct attributed to the councillor. But there were probably many people who applied the adage that there is no smoke without fire and may others who did not, for whatever reason, change their minds after reading the first article. The harm to the plaintiff's reputation would not have been mitigated by the failure of the first defendant to publish appropriate apologies in the Star and IOL.
- 62 There is another class of persons in whom the plaintiff's reputation was diminished and who, for reasons of their own, had an interest in keeping the plaintiff's reputation weakened. This members of this class are some of the learners at the school.
- 63 In *Le Roux*, the effect of a defamatory publication on the relationship between learners and an authority figure such as their school principal was discussed by Brand AJ in a context somewhat different from that

with which I am presently dealing. The learned judge wrote¹⁴ that the purpose of the defamatory matter in that case was to tarnish the image of two figures representing authority and to reduce that authority by belittling them and rendering them the objects of contempt and disrespect; and to subject these figures of authority to ridicule in the eyes of the observers who would predominantly be learners at the school.

64 Of course in the present case the defendants had no desire to achieve these outcomes. But the point, as I see it, is that the harm to the plaintiff's reputation is the natural and probable outcome of the publications. And schoolchildren being schoolchildren, that harm can be expected to endure even though it was conclusively demonstrated that the plaintiff was not the man who was guilty of wrongdoing. In the hands of at least some of the learners, the publications would constitute a weapon to subvert authority which they would not lightly relinquish.

65 That, at least in part, was why there was giggling in assembly on the Monday following the publications and why the plaintiff needed to carry out what he described as damage control.

66 I find that the damage to the plaintiff's reputation caused by the publications was substantial.

Quantum

67 All this means that the plaintiff is entitled to damages. What should he be awarded?

68 I take into account that the defamation was serious but that in the platforms most likely to be accessed by the residents of Atteridgeville, the damage was swiftly mitigated by the publication of the correction and apology by the Pretoria News. I take into account that no such correction and apology was published by the Star and IOL and that the correction and apology published were accorded less prominence than the defamation.

69 The second defendant sought to justify the relatively lesser prominence given to the correction and apology on the ground that the news media's mistake was "only" in relation to the image and not to the text. I think that this wrongly approaches the question from the perspective of the news media, which caused the harm, and not, as it should have been, from the perspective of the plaintiff, as the person who was harmed.

- 70 I take into account too that the plaintiff will have in his arsenal to counter the effects of the defamation a judgment of the High Court. I mean no disrespect to lower courts but a judgment of the High Court is more prestigious than an equivalent judgment in a lower court. Had that not been so, I would have considered a higher award of damages.
- 71 I have been guided too by the award in *Le Roux* of R25 000 which, counsel accepted, translates to R38 000 in the present value of money. I am of course aware that each case must be decided on its own facts. In *Le Roux*, the lewd acts attributed to the plaintiff were performed with another adult. In the present case, the misconduct was said to be with a minor.
- 72 The effect on the plaintiff's reputation was more pronounced in the area served by the Pretoria News than in the others but in those others the harm caused by the publication was not mitigated by a correction and apology.
- 73 Taking all this into account, I conclude that each of the three defamations should carry an award of R40 000. That translates to a total award of R120 000.

Costs

74 The award I shall make falls within the jurisdiction of the regional court. Counsel for the defendants submitted that I should award costs on the scale of that court if I found for the plaintiff. Counsel referred me to *Mogale and Others v Seima*,¹⁵ in which the SCA held, *obiter*, that the idea that defamation and other *injuria* claims may, without regard to their monetary value, be instituted in the High Courts is outdated. No reasons were given for this opinion. The idea that such claims could be brought by a plaintiff as of right in the high courts seems to me to be grounded in the Roman-Dutch notion that the dignity and reputation of all persons is of equal value and as such, when impugned, worthy of the respect of a high court hearing regardless of the quantum of the harm done to the plaintiff. I think, with respect, that this consideration is valid in our constitutional era and not outdated at all.

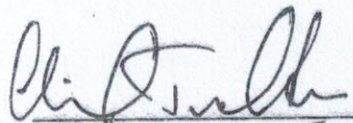
75 I have pointed to the prestige value to the plaintiff of a high court finding in his or her favour and the effect such a finding rightly has in the assessment of an appropriate award.

- 76 In my view, these considerations apply to the plaintiff and I shall award him his costs on the high court scale.

Order

- 77 I make the following order:

- 1 There will be judgment for the plaintiff against the first defendant for R120 000.
- 2 The judgment in paragraph 1 above will be joint and several against the second and third defendants respectively with the first defendant for R40 000 each.
- 3 The defendants must all, jointly and severally, pay the plaintiff's costs on the high court scale.


NB Tuchten
Judge of the High Court
27 May 2019