



**In the High Court of South Africa
(Western Cape Division, Cape Town)**

Case number: 17211/2023

LATARI HOUSE (PTY) LTD

First plaintiff

VIRON PAPADAKIS

Second plaintiff

JOHN PAPADAKIS

Third plaintiff

FREDDY KALENGA

Fourth plaintiff

and

THABISO DANCA

First defendant

JORDAN PELSER

Second defendant

CHRISTOPHER MICHAEL LOGAN

Third defendant

JUDGMENT DELIVERED ON 13 NOVEMBER 2024

Introduction

1. This is an application for default judgment following the institution of a defamation action. The first to third plaintiffs seek damages against the third defendant.¹
2. It is necessary to mention the circumstances in which default judgment is sought.
3. The action was instituted during October 2023 . The combined summons was duly served on the third defendant on 16 February 2024. He failed to enter appearance to defend.
4. An application for default judgment was accordingly enrolled for hearing in the unopposed motion court on 24 July 2024. The second and third plaintiffs were present to give oral evidence. On that day, an attorney appeared on the third defendant's behalf with instructions to defend the action. The attorney asked for a postponement to allow the third defendant to bring a substantive application for the upliftment of the bar, and to deliver a plea. In terms of an order subsequently granted by agreement between the parties, the matter was postponed to 18 October 2024 to enable the third defendant to bring such application and to plead his case in defence of the action. The application for the upliftment of the bar was to be instituted before 20 August 2024.
5. The third defendant did not take any further steps. On 2 October 2024 he sent an email to the plaintiffs' attorney, claiming that his attorney had only been briefed to represent him on 24 July 2024, and that due to financial constraints he was unable to secure legal representation. He claimed further that in a related Equality Court matter, where he did have legal representation, there

¹ The progress of the litigation between the fourth plaintiff and the first and second defendants is not relevant for present purposes.

would be an attempted mediation. The Equality Court proceedings were, according to the email, to be heard on 19 October 2024, which was a Saturday.

6. The third defendant's attorney was informed of the email communication. He first responded, on 2 October 2024, by stating that his brief had come to an end in August 2024. He followed this up with another email on the same day to the effect that he had been briefed only to appear on 24 July 2024, and that he would deliver a notice of withdrawal as the third defendant's attorney of record.
7. No notice of withdrawal had been delivered by the time of the hearing of the action on 18 October 2024.
8. There was no further communication from the third defendant. On the day of the hearing he was present in court. He asked for a postponement of the matter because he wanted to defend the action, and stated further that the parties could come to an agreement in the course of the pending Equality Court proceedings. He stated that he had been working in the United States of America since earlier this year, and that he had not been able to give attention to this matter.
9. Having considered the third defendant's submissions, the Court was not amenable to granting yet another postponement of the matter. The initial postponement, and the more than ample time period afforded the third defendant to apply for the upliftment of the bar, was agreed with his attorney on the third defendant's behalf. The attorney in question was still on record as the third defendant's attorney. He moreover enjoyed legal representation in the Equality Court proceedings. The third defendant gave no satisfactory explanation for his failure to comply with the provisions of the agreed order. The fact that he had been working overseas is no excuse, given the importance of the matter and his integral role in it. His conduct pointed to a last-minute attempt yet again to delay the hearing of the action. The proceedings in this

Court are not a game, and neither is the third defendant's significant involvement in the serious events set out in the particulars of claim and referred to below. There is no running away from it.

10. In the circumstances, the oral application for a postponement was denied and the plaintiffs proceeded to furnish their evidence. The third defendant took no further part in the proceedings.

The events leading to the institution of this action

11. At the time relevant to these proceedings, the first plaintiff operated two establishments in central Cape Town, namely Hanks Olde Irish Pub ("Hanks") and Love Thy Neighbour ("LTN"). The second and third plaintiffs, who are brothers, were at that stage the co-owners of the first plaintiff.
12. The origin of the dispute was the following: At about 23:00 on Thursday, 1 December 2022 the fourth plaintiff did duty as a doorman at the first plaintiff's premises. Part of his duties was to not allow persons younger than 18 years old to enter the premises. There was an incident involving the first and second defendant and the fourth plaintiff. The first defendant wanted to enter the premises. The fourth plaintiff was unsure whether the first defendant was of legal age to enter the premises and requested the first defendant to remove his cap and to produce his identity document to verify his age.
13. The first defendant appeared to be inebriated and was upset because he was being stopped by the fourth plaintiff. He (the first defendant) became aggressive and made racial and xenophobic statements to the fourth plaintiff within hearing distance of other people in proximity. The gist of these statements was that the fourth plaintiff was a racist, that he discriminated against the first defendant and did not want to allow him to enter the premises because he was black, that South Africa was not fourth plaintiff's home and that

he (the fourth plaintiff) was an idiot who should go back to his home country.

14. Neither the second nor the third plaintiff was aware of this incident at the time.
15. In the late afternoon of Friday, 2 December 2022, a group of about six persons, including the third defendant, entered the first plaintiff's premises. The third defendant demanded to speak to a manager. When greeted by the manager on duty, the third defendant began yelling words to the effect that the first plaintiff was a racist establishment because of the alleged incident of racism that had occurred towards the first defendant the previous day, 1 December 2022. The third defendant's tone was aggressive, and he was swearing.
16. The third defendant then demanded to speak to the owner, and the manager got hold of the second plaintiff telephonically. The third defendant started yelling at the second plaintiff over the phone, repeating that the first plaintiff was a racist establishment, and demanding that the second plaintiff come to the premises. Upon the second plaintiff's arrival at the premises, the third defendant continued yelling the same accusations of racism.
17. The third defendant threatened to get the mainstream media (Sunday Times) involved who "*will have a field day with this*" and to get protesters and the EFF on the premises. He threatened that Hanks would become like Clicks overnight, referring to looting and damage done by protesters at that store.
18. This incident was videotaped on a cell phone by one of the persons in the third defendants' group. Segments of the cell phone video were widely published by, *inter alia*, the third defendant on various mainstream online news platforms, as well as the social media platform, YouTube. Several articles appeared on the SABC News website, the SABC News YouTube channel, the News24 YouTube channel, the News24 website, the Newzroom Africa YouTube channel, the ENCA website, and the ENCA YouTube channel over the period 4 December

2022 to 7 December 2022. These articles and videos were published and accessible by the public using television or the internet, and were widely viewed or read by the general public.

19. On 4 December 2022, for example, SABC News published an online article under the title "*Cape Town Hank's Old Irish Pub called out for a racist incident*". In this article, there is a video of a SABC News TV presenter who reports on and interviews the first and third defendants *inter alia* on an alleged incident of racism that those defendants claimed occurred at the first plaintiff's premises of first plaintiff on 1 December 2022, the incident that was videotaped on 2 December 2022, and the events thereafter.
20. The article was also published on the SABC News's YouTube channel under the title "*Cape Town Hank's Old Irish Pub called out for a racist incident: Thabiso Danca & Christopher Logan*", and has been viewed more than 107 000 times. In the article, which contained parts of the cell phone video taken on 2 December 2022, the first and third defendants state the following concerning the plaintiffs:
21. In the video the third defendant, in a loud voice, says the following to the second plaintiff (this occurred on 2 December 2022):

"This is what happened, okay this man right here, Thabiso, came in yesterday okay, moments after Jordan came in, moments after, okay, your bouncer stop him and said, why are you going in who are you going into, okay. He said why are you asking me? He said you can't come in here unaccompanied without a white person. He said "what?" He said you can't come in here without a white person. If you come in here, I know what you like, you steal, you guys' cause trouble, you need to come in here with a white person. He asked who decides this? This this is what the bosses have told me. Then Jordan, not knowing where Thabiso is, goes out and sees the bouncer re-explain this and says it to him again and says it's not me who decides it's the policy?"

22. The first defendant says the following when questioned by the TV presenter, for the purposes of the article:

"As soon as I walked into Hanks, I was stopped to go in because my friends were already inside and the bouncer said to me uh mustn't go in if I'm not accompanied with a white friend. I'm like, I was like, no I don't understand what really you saying to me. And said no, if I ... if it's just me I can't go in and luckily my friend came back. And he also heard what the bouncer was saying to me and um the bouncer said it again to my friend Jordan that uh if I'm ... if it's just me, myself I can't go in, because people of colour they steal and they go in there and in the bar and they cause trouble."

23. The first defendant, when asked by the TV presenter: *"Did he say categorically to you that that is the policy of the pub or what the owners of the pub or the bosses wish to be in place?"* responded by saying:

"That was what I was very concerned about because I asked him that, is he telling me that personally or is what he was told to do? And he like, he said yeah, he's doing what he's told to do by his bosses. And my friend can confirm that because he was there when he said it again to me, that he can't let me in because I will go in there and cause trouble because I'm black."

24. The third defendant then joins the conversation:

"I think it would be wrong for a business, like Hank's to scapegoat the bouncer. A bouncer is hired under a specific pretext with specific instructions about who to admit and how to admit them and the bouncer answers to the owners and that's who pays his salary. And it's very convenient for them to say, this is just the policy, the thoughts of one individual bouncer, but that wasn't articulated by the bouncer and that wouldn't be within his power to decide who they're going to let in. You're hired, you're informed, and you implement what you've been told to do, and I felt very strongly that they're simply trying to scapegoat the bouncer."

25. The third defendant continues by saying: *"That's unacceptable kind of shows*

that there is no remorse that this was a clearly thought-out thing."

26. On a question by the TV presenter whether the first and third defendants believe that first plaintiff is a racist institution, the third defendant answers: *"100 percent"*. Later in the interview the third defendant states the following: *"The biggest issue here is that there is clear institutional racism at this place and that it's not unique to Hanks. This is a very specific example where it's documented, but there is a culture of this in South Africa and in Cape Town specifically and I think damage should be the main attention of this event."*
27. The gist of the allegations made in the article on 4 December 2022 was repeated time after time over the ensuing days, in colourful language. The third defendant took centre stage in the videos and articles as the first defendant's protector and in denouncing the plaintiffs.
28. On 5 December 2022, a news clip was published on News24's YouTube channel under the title *"I felt embarrassed and dehumanised: Hanks Pub patron refused entry because he is black"*. This clip contains extracts of the cell phone video taken by a person in third defendant's group on 2 December 2022, and was viewed more than 28 000 times. The third defendant is heard on the video berating the first plaintiff, in strong language, for being a racist establishment.
29. On 6 December 2022 a clip was published on Newzroom Africa's YouTube channel under the title *"Logan describes Hank's Olde Irish Pub racist incident"*. In this clip a Newzroom Africa TV presenter reports on and interviews the third defendant *inter alia* on the alleged incident of racism that first and third defendants claimed occurred at the premises of the first plaintiff on 1 December 2022, the incident that was videotaped by a person in third defendant's group on 2 December 2022, and the events thereafter. Whilst this interview is being conducted with the third defendant, extracts of the cell phone video are being shown. This clip has been viewed more than 4 800 times.

30. In this clip the TV presenter, by way of introduction, says the following:

"Government has condemned an alleged racist incident which took place at Hank's old Irish pub in Cape Town. Thabiso Danca was reportedly barred from entering the establishment allegedly because he wasn't in the company of a white person. Now the victim's friend Christopher Logan intervened, and an altercation ensued. Logan joins us now for more on the story."

31. The third defendant then declares *inter alia* the following:

"... before starting to confront the owner was a sense of complete outrage that someone, I care about so much that's so close to me and that I consider a brother had received treatment like this in a place that I can walk into freely and without anyone saying anything to me. Uh it incensed me, it's I could see no justification and I believe it had to be confronted head on ... if you hear something like this, and then the reaction we were expecting was that maybe a more apologetic and maybe a commitment to retrain the staff and take responsibility for this incident, this is unacceptable but rather we were told that they reserved the right of admission and that, is essentially standing by this, um is the sense that we've got."

32. On a question from the TV presenter whether this was the first time that the third defendant came across such a situation, the third defendant responded

"Yes, it was definitely a first time hearing about this at Hanks, ... this is maybe, a very explicit example of this sort of terrible racist behaviour ... I hope this incident can draw more attention to and that this is bigger than Hanks ... "

33. On 7 December 2022 an article was published on the ENCA website under the title *"Cape Town pub under spotlight for racism"*. This article also contains a video, which was also published on ENCA's YouTube channel, under the same title. In this video the third defendant states that *".. . what's most important here*

and that's to do with racism, racism that Thabiso faced racism and Hanks ... "

34. On a comment by the reporter that the first plaintiff's owners (the second and third plaintiffs) released a statement saying that the allegations of racism are unfounded and unproven and that in the last 30 years they have had no racist incident at their premises, the third defendant responded:

"... from the moment this thing started they, all they've done is double down. You know, the response by denying everything, by trying to go on the counterattack, um it's just an attempt to try to divert from what's actually going on here. When this whole thing started their first response is we reserve the rights of admission which basically means that they think they have the right to do this sort of thing so honestly, I think the approach that they're taking from beginning to now has been totally incorrect and the fact that this has gotten to this height they're clearly not reckoning with the magnitude of it. ... It's time to wake up and apologise for what's happened and commit to making serious play, put serious commitments in place to address this. Doubling down, denying everything, saying, going on the offensive, is not going to make it away. It's infuriating South Africa more, because this is touch something very deep within the psyche of many people in South Africa and it needs to be addressed. If they hope to move forward they've got to get serious about this, and that's what I would say is that you've got to face this thing head on with an emotional intelligent way that doesn't just double down and that's what we hope from Hanks."

35. The furore went on for days. It is unnecessary to repeat all of the impugned statements that are on record. An investigation into the matter has since confirmed that the alleged racist incident on 1 December 2022 did in fact not occur - the fourth plaintiff merely wanted to verify the first defendant's age. There was no merit in the third defendant's tirade against the plaintiffs on 2 December 2022 and thereafter.

The consequences of the statements

36. The result of the debacle was, unsurprisingly, a severely negative response from the public, including protests by, amongst others, members of the Economic Freedom Fighters (EFF) outside the first plaintiff's premises for an entire day soon after the event. Threats of violence were made against the plaintiffs. The cell phone video went viral on social media, and there was a public outcry against the plaintiffs. The second and third plaintiffs feared for their safety and that of their employees and patrons, and were scared, too, of damage being caused to the premises. They decided to close the businesses for a period - Hanks was closed and did not trade from 5 December 2022 to 13 December 2022, and LTN was closed and did not trade from 4 December 2022 to 4 January 2023. This was over one of the busiest trading periods for the business in general.
37. Defamation has been defined as the wrongful, intentional publication of words or behaviour concerning another person, which has the effect of injuring his status, good name or reputation. Publication entails the communication or making known to at least one person other than the plaintiff. Once a plaintiff has established the publication of defamatory matter concerning himself, it is presumed that the statement was both wrongful and intentional. The defendant has a full onus to rebut this presumption.²
38. The plaintiffs plead, and I agree, that the third defendant's statements were wrongful and defamatory of plaintiffs, and were made with the intention to defame the plaintiffs and to injure them in their reputation. The statements meant, were intended to mean, and were understood by those to whom they were published to mean that the first plaintiff was an establishment which has a racist admission policy, and thus that the first plaintiff discriminates against persons on the basis of their skin colour or membership of a particular racial or ethnic group.

² *Le Roux v Dey* 2011 (3) SA 274 (CC) at paras [84]-[86].

39. As regards the second and third plaintiffs as owners of the first plaintiff, the statements meant, and were understood to mean, that the second and third plaintiffs had implemented a racist policy in terms of which black persons were only allowed entrance to the first plaintiff's premises if they were accompanied by a white person, and thus that the second and third plaintiffs discriminated against persons on the basis of their skin colour or membership of a particular racial or ethnic group.
40. Given *inter alia* the importance and relevance of the topic – racism in our society – and the inflammatory nature of social media, the statements were published or caused to be published with the knowledge and with the intention that they would be re-published, and further reported on and discussed by and in the public domain.
41. The second and third plaintiffs both presented oral evidence at the hearing of the action. Mr Viron Papadakis testified that he and his brother had been operating businesses in Cape Town for the past 30 years. They also have a registered Non-Profit Organisation (NPO) called Bread for Life. In all of the years there have never been any complaints against them or their businesses on the basis of racism or discrimination of any kind.
42. On the contrary, they have always focused their efforts to the service other people. In this regard they have, through the NPO and partnered with other NPOs, served homeless communities, refugee communities and those living with disabilities for the past 15 years.
43. The plaintiffs had enjoyed a good reputation and standing in the community. This has now been obliterated because of the defamatory statements published by the third defendant. Their businesses, including the first plaintiff, and their NPO relationships have also suffered. They have struggled to keep their commitments to those in need because of the marked decline in the first

plaintiff's income.

44. Mr Papadakis testified that his involvement in the community is based on his faith and the conviction to serve others. The defamatory statements contradicted his Christian beliefs and the values that he upholds in the community. Being labelled a racist (or racist institution in the case of the first plaintiff) in the mainstream media and on many social media platforms has caused people to believe that he and his brother are fake and phony Christians, and persons who discriminate on the basis of race. Their good names and reputations as upstanding, honest persons with integrity who unselfishly serve the community have been damaged and lowered in the estimation of right-thinking members of society. He has had to leave the first plaintiff's business as a result of financial difficulties experienced following the incident, and he does not know whether people will ever trust him again.
45. They are now recognised in public because of the incident, and have been at the receiving end of hate messages on social media. Because of the trauma they have experienced during and after the incident, they have had to see a therapist to help them cope with what had happened.
46. Mr John Papadakis confirmed this evidence. He is now the sole owner of the first plaintiff. He testified that he lived by his father's words, namely "*In business and in life, it is better to lose your eye than your name*". His good name, and that of the other plaintiffs, was taken away due to no fault of theirs. Their names have been smeared to such an extent that their long-standing business partners severed ties with them. They lost many friends. The reputation that they had built up over many years was lost in the blink of an eye.
47. It is clear that, as a result of the publication of the statements, the plaintiffs were severely embarrassed and publicly degraded. The second and third plaintiffs' demeanor in the witness box confirmed the damage done to them. They were

injured in their names, reputations and standing in the community, and were (and still are) liable to be treated with severe aversion, suspicion, distrust and hostility. They have been, and will be, prejudiced in their professional and private endeavours, and it is unlikely that they will ever fully recover their respective reputations.

The plaintiff's general damages

48. Awards in defamation cases serve a specific purpose, namely commensurately to compensate someone for the injury to his or her reputation, integrity and dignity. Awards do not serve a punitive function, and are characterised by low monetary amounts as a result. This is a fundamental principle of the jurisprudence on defamation awards and has been cited with approval in various courts, most notably in *Mogale v Seima*.³ The Supreme Court of Appeal captured the principle, with reference to *Esselen v Argus Printing and Publishing Co Ltd*,⁴ in the following terms:

*"In general, a civil court, in a defamation case, awards damages to solace plaintiffs' wounded feelings and not to penalise or to deter the defendant for his wrongdoing ... Clearly punishment and deterrence are functions of the criminal law, not the law of delict... To sum up: having regard to the foregoing and the general trend in recent times and the fact that our courts have not been generous in their awards of solatia ... a practice that is to be commended."*⁵

49. Calculating the *quantum* of the award depends on the particular facts of each case. It requires a realistic assessment of what is just and fair in the circumstances.⁶ There is a range of factors that a Court may rely on to determine what is just and fair in the circumstances. Those factors include, *inter alia*, the nature and gravity of the defamatory words, the nature and extent of

³ 2008 (5) SA 637 (SCA) at paras [9]-[12], and [18].

⁴ 1992 (3) SA 764 (T) at 771G-I.

⁵ *Mogale supra* at para [18].

⁶ *Van der Berg v Coopers & Lybrand Trust (Pty) Ltd* 2001 (2) SA 242 (SCA) at para [48].

the publication, the rank or social status of the parties, the intentions of the defendant, and the absence or nature of an apology.⁷

50. The defamatory statements in the present matter were of a serious nature and were aimed at causing great hurt to the plaintiffs' dignity, good name and reputation. The second and third plaintiffs were defamed as members of the white class who owns and runs a "racist institution" (the first plaintiff) and the plaintiffs were called out for a "racist incident" that in fact never occurred.
51. The defamatory statements were published and circulated nationally. They spread like a wildfire. Within less than a week, the third defendant appeared in several television interviews conducted by the mainstream media where the cell phone video was shown. The third defendant repeated and elaborated on the initial defamatory statements made in respect of the plaintiffs. These interviews were republished in the social media and were viewed by tens of thousands of people.
52. The severe damage to the plaintiffs' reputation and standing in the community, as well as on their business and social lives, has been detailed earlier in this judgment. The second and third plaintiffs referred to the experience as life-altering.
53. Although the third defendant did not witness the alleged incident on 1 December 2022, he attended the first plaintiff's premises deliberately, accusing the plaintiffs of being racist and a racist institution. This confrontation was recorded by the persons accompanying the third defendant, and circulated on social media. During the confrontation the second plaintiff was shouted at, and not provided an opportunity to respond. The third defendant was aggressive, confrontational, and using foul language. His threats of involving the media and the EFF became a reality.

⁷ *Mogale supra* at paras [13]-[16].

54. It seems that the third defendant and his group were not interested in the truth but their motive and conduct were to make the incident on 2 December 2022 as sensational and emotionally laden as possible so that the video they were recording of the incident could go viral on social media.
55. The third defendant has not apologized for his conduct.
56. The first, second and third plaintiffs each claims damages in the sum of R500 000,00. Given the conservative approach espoused in the relevant case law, I am of the view that this sum, despite the undeniable seriousness of the defamation, is too high. In the exercise of my discretion I regard the sum of R250 000,00 as appropriate in relation to each of the plaintiffs.

Special damages suffered by the first plaintiff

57. The first plaintiff suffered, in addition, damages as a result of a loss of income during the period its businesses were closed.
58. Because of the defamatory statements and the repeated publication thereof, and the subsequent closing of Hanks and LTN, the first plaintiff has suffered a sharp decline in income since December 2022. The businesses have since received several one-star reviews on review platforms such as "Google reviews", "Zomato" and "Trip Advisor". The second and third plaintiffs both testified as to the troubles experienced in the business since the incident because of the fact that the establishment is now regarded as racist.
59. Spreadsheets submitted into evidence detailed the individual and combined income, expenses and net profit (or loss) of Hanks and LTN for the period July 2022 to July 2023. In comparing the net profit (loss) from December 2022 to July 2023 with the five months preceding the incident, it is clear that the first

plaintiff suffered a loss of income far in excess of the sum of R500 000,00 as claimed in the particulars of claim.

60. The first plaintiff has not amended its particulars of claim to seek the higher amount proved. I am accordingly satisfied that it should be awarded special damages in the sum of R500 000,00.

Costs

61. The plaintiffs seek costs on a punitive scale. Given the nature of the matter and the circumstances discussed in the course of this judgment, I agree that such an award would be appropriate.

Order

62. In the premises, I make the following order:

The third defendant shall pay to the first, second and third plaintiffs the following:

- a. The sum of R500 000.00 to the first plaintiff as special damages.**
- b. The sum of R250 000.00 to the first plaintiff as general damages.**
- c. The sum of R250 000.00 to the second plaintiff as general damages.**
- d. The sum of R250 000.00 to the third plaintiff as general damages.**
- e. Interest on each of these amounts at the prescribed legal rate *a tempore morae*.**

f. Costs of suit on the scale as between attorney and client.

P. S. VAN ZYL

Acting judge of the High Court

Appearances:

Counsel for the first to third plaintiffs: M. Botha, instructed by Nel &
Associates

No appearance for the third defendant