



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

Case number: 25769/2024

In the matter between:

ROSEMARY RYAN

Plaintiff

and

HYATT REGENCY CAPE TOWN

First defendant

YUSRIE CORNELIUS

Second defendant

JUDGMENT DELIVERED ON 20 OCTOBER 2025

VAN ZYL AJ:

Introduction

1. The plaintiff instituted action against the defendants for defamation arising from remarks allegedly made about the plaintiff by the second defendant, who was a driver employed by the first defendant, to the doorman at the La Colombe restaurant in Constantia.
2. The first defendant gave notice of intention to defend, and the action is proceeding against it. The second defendant gave no such notice. The plaintiff accordingly sought default judgment against him, seeking R500 000,00 in damages.

The plaintiff's evidence

3. The plaintiff delivered an affidavit in support of her application for default judgment but, as the claim was illiquid,¹ I requested that oral evidence be led under Rule 31(2)(a).² Although the defendant did not present any defence to the plaintiff's claim, it remained incumbent on me to consider whether the plaintiff was entitled to the relief sought.
4. The plaintiff described the incident which gave rise to the action. It is not necessary to go into the details of the event because, from the outset of her evidence, it became clear that the plaintiff was fundamentally reliant on hearsay in support of her claim. In brief, the plaintiff testified that she and her elderly mother had been dropped off at the restaurant by the second defendant (the driver). After their lunch, the plaintiff and her mother left in a taxi. The plaintiff subsequently received a phone call from one of her cousins, who had also attended the lunch. The cousin told the plaintiff that the doorman at the restaurant had informed her (the cousin) that the driver had told him (the doorman) that the plaintiff had been abusive to her mother in his vehicle on their way to the restaurant. The doorman indicated to the cousin that members of the public in the vicinity heard the remarks which were, of course, untrue. Members of the plaintiff's family also heard what the doorman said to the plaintiff's cousin.
5. The plaintiff is a well-known businesswoman, and the statements allegedly made about her conduct towards her elderly mother were damaging to her dignity and reputation.
6. The plaintiff was the only witness to testify. I queried the position with her counsel, and the matter was postponed to enable the plaintiff to arrange for the first defendant's doorman, at least, to give evidence. At the resumed hearing counsel

¹ See the discussion in *Economic Freedom Fighters and others v Manuel* 2021 (3) SA 425 (SCA) paras 91-104.

² Rule 31(2)(a): "*Whenever in an action the claim or, if there is more than one claim, any of the claims is not for a debt or liquidated demand and a defendant is in default of delivery of notice of intention to defend or of a plea, the plaintiff may set the action down as provided in subrule (4) for default judgment and the court may, after hearing evidence, grant judgment against the defendant or make such order as it deems fit.*"

informed me that the doorman was not available to give evidence, and that the plaintiff would offer no further evidence in support of her claim.

7. I am not amenable to granting default judgment in these circumstances.
8. Hearsay evidence is evidence of what someone other than the witness has stated. Section 3(4) of the Law of Evidence Amendment Act 45 of 1988 (“the Act”) defines hearsay evidence as evidence “*whether oral or in writing, the probative value of which depends upon the credibility of any person other than the person giving such evidence*”. The present case entails double hearsay: the doorman told the plaintiff’s cousin what the driver had allegedly said.
9. To an extent, the probative value of the plaintiff’s evidence depends upon her own credibility. The accuracy of her evidence, for instance, as to what her cousin had told her and her evidence regarding the circumstances in which the information was conveyed depended upon her own credibility.³ I have no reason to regard the plaintiff as uncreditworthy witness. The probative value of the evidence depends, however, to a much greater extent upon whether the doorman was accurately conveying to the cousin what the driver had told him, and whether the cousin, in turn, accurately conveyed the message to the plaintiff. Whether that is the case ultimately (going to the root of this broken telephone) depends entirely upon the doorman’s credibility. I have no basis upon which to assess the reliability of the doorman’s say-so, or, for that matter, the cousin’s.
10. There is thus no admissible evidence, whether oral or on affidavit,⁴ before me regarding the occurrence, nature and extent of the alleged act of defamation.

³ *Mdani v Allianz Insurance Ltd* 1991 (1) SA 184 (A) at 189I-J.

⁴ See *Firststrand Bank Ltd v Kruger and others* 2017 (1) SA 533 (GJ) para 13 (a case dealing with rectification): “*The aspect of rectification just dealt with also brings into focus the basic difference between allegations pleaded in a summons and those which must be deposed to under oath in motion proceedings. Default judgment will be granted in the former case where the cause of action is properly set out in the pleadings (subject to such rules or practices which require an affidavit when applying for judgment) whereas in the latter affidavits replace both the pleadings and the essential evidence that would be produced at trial through leading vive voce evidence. It follows that in motion proceedings an allegation of fact can only be made through admissible evidence contained in the affidavits filed.*” (My emphasis.)

11. No reason was advanced why the hearsay evidence should nevertheless be accepted on the basis of one of the exceptions provided for in section 3(1) of the Act, which provides as follows:

“(1) *Subject to the provisions of any other law, hearsay evidence shall not be admitted as evidence at criminal or civil proceedings, unless-*

- (a) each party against whom the evidence is to be adduced agrees to the admission thereof as evidence at such proceedings;*
- (b) the person upon whose credibility the probative value of such evidence depends, himself testifies at such proceedings; or*
- (c) the court, having regard to-*
 - (i) the nature of the proceedings;*
 - (ii) the nature of the evidence;*
 - (iii) the purpose for which the evidence is tendered;*
 - (iv) the probative value of the evidence;*
 - (iv) the reason why the evidence is not given by the person upon whose credibility the probative value of such evidence depends;*
 - (v) any prejudice to a party which the admission of such evidence might entail; and*
 - (vi) any other factor which should in the opinion of the court be taken into account,*

is of the opinion that such evidence should be admitted in the interests of justice.”

12. I do not regard the admission of the evidence to be in the interests of justice in the present matter. The hearsay evidence goes to the heart of the case – whether the plaintiff had in fact been defamed. It is an established principle that, in such a case, courts will be less amenable to allowing such evidence than in cases where the evidence sought to be admitted relates to a collateral aspect.⁵ At a basic level, the court could not assess the demeanour of the doorman. The court does not know what the relationship between the doorman and the driver was, and whether the former might have had a motive for making false allegations as regards the latter. The alleged conversation was not corroborated by any other evidence led during the proceedings. There is no measure by which to assess whether the evidence bears

⁵ *Hewan v Kourie* NO 1993 (3) SA 233 (T) at 239F; *S v Ramavhale* 1996 (1) SACR 639 (A) at 649d.

“the hallmark of truthfulness and reliability”.⁶ Relying on nothing more than the series of conversations from driver to doorman to cousin to plaintiff to hold the driver liable in damages is, for obvious reasons, severely prejudicial.

13. The fact that the hearsay evidence is the only and thus the best evidence available to the plaintiff does not assist. Evidence is not rejected because better evidence is available, and inadmissible evidence does not become admissible simply because it is the best evidence available.⁷

Order

14. In the premises, the application for default judgment against the second defendant is dismissed.

P. S. VAN ZYL

Acting judge of the High Court

Appearances:

For the plaintiff:

Ms N. Meyer

Instructed by:

ML Schoeman Attorneys

No appearance for the defendants

⁶ *S v Mpofu* 1993 (2) SACR 109 (N) at 116i.

⁷ *Vulcan Rubber Works (Pty) Ltd v SAR&H* 1958 (3) SA 285 (A) at 296D-F.