

**REPUBLIC OF SOUTH AFRICA
IN THE HIGH COURT OF SOUTH AFRICA
(LIMPOPO DIVISION, POLOKWANE)**

CASE No: 2769/2023

(1) REPORTABLE: YES/NO

(2) OF INTEREST TO THE JUDGES: YES/NO

(3) REVISED: YES/NO

DATE: 9 April 2026

SIGNATURE: DIAMOND AJ

MOITSI CHOENE DONALD

PLAINTIFF

and

L[...] F[...]

FIRST DEFENDANT

ROMANS PIZZA (POLOKWANE)

SECOND DEFENDANT

JUDGMENT

DIAMOND A J:

[1] This is an action for defamation brought by the plaintiff, Mr Moitsi Choene Donald, against the first defendant, Ms L[...] F[...], a co-worker, and the second defendant, Romans Pizza (Polokwane), the plaintiff's employer. The plaintiff seeks damages arising from a written grievance letter dated 5 November 2022 in which the first defendant complained to management that the plaintiff had sexually harassed her and, in one passage, referred to him as a "boy."

[2] The plaintiff claims a total of R1,300,000.00 in damages. This sum is made up of R200,000.00 for injury to his dignity, R200,000.00 for injury to his good name and reputation, and R900,000.00 for estimated future loss of income. He further seeks a written apology from both defendants and costs of suit on scale C, with counsel's fees on scale C.

[3] Following the grievance letter, the plaintiff was charged by the second defendant with three counts of gross misconduct: gross insolence, gross negligence regarding food safety, and sexual harassment. He appeared before an independent disciplinary hearing chaired by an independent chairperson from the South African Council of Arbitrators and Ombudspersons (SACAO). He was found guilty on all three charges and dismissed on 6 December 2022.

[4] The plaintiff thereafter referred an unfair dismissal dispute to the Commission for Conciliation, Mediation and Arbitration (CCMA). The CCMA dismissed his dispute and confirmed that his dismissal was substantively and procedurally fair.

[5] The plaintiff now seeks to achieve before this court what he could not achieve before the disciplinary tribunal or the CCMA. He contends that the first defendant's grievance letter was defamatory and that the second defendant is both vicariously liable for publishing it and independently liable for having formulated charges against him on the basis of the letter without conducting an adequate prior investigation. For the reasons that follow, I am satisfied that the plaintiff's claim is entirely without merit in law and in fact, and must be dismissed with costs.

THE PARTIES AND BACKGROUND

[6] The plaintiff is an adult male who was employed by the second defendant as a hospitality worker, principally as a chef or kitchen hand, from approximately 2004 until his dismissal on 6 December 2022. He worked at the Romans Pizza branch situated at the Palm Centre, Polokwane, Limpopo.

[7] The first defendant, Ms L[...] F[...], is an adult female. She was employed by the second defendant at the same branch. At the relevant time, she worked

alongside the plaintiff and was subject to the plaintiff's conduct in the kitchen and changing-room areas of the premises.

[8] The second defendant, Romans Pizza (Polokwane), is a juristic person conducting business as a franchised fast-food restaurant at the Palm Centre, Polokwane. The owner and operator of the second defendant at all relevant times was Mr Pieter van der Merwe, who testified at trial.

[9] During the course of his lengthy employment, the plaintiff accumulated a substantial disciplinary record. The record was placed before this court as Exhibit B (pages 33 to 54 of the agreed bundle). It records numerous warnings, disciplinary hearings, and adverse findings over many years. As will be addressed below, this record is directly material to the plaintiff's claims relating to future loss of income and his standing as a witness.

[10] It is common cause that on or about 5 November 2022, the first defendant submitted a written grievance letter to management. In that letter, she complained that the plaintiff had engaged in a sustained pattern of sexual harassment, including unwanted touching, pressing his private parts against her body, and aggressive conduct. In the course of the letter, she also referred to the plaintiff as a "boy."

[11] The first defendant gave the letter to her line manager, a Mr Lovemore, who in turn gave it to the owner, Mr van der Merwe. Upon receiving the letter, Mr van der Merwe conducted a preliminary investigation. He interviewed the first defendant, reviewed available CCTV footage, and consulted with an external labour consultant. Satisfied that a prima facie case of misconduct existed, he formulated three charges against the plaintiff and referred the matter to an independent disciplinary hearing.

[12] The disciplinary hearing was presided over by an independent chairperson drawn from SACAO. The plaintiff was found guilty on all three charges. Although the plaintiff had pleaded not guilty, he admitted to certain elements of the conduct during the proceedings. He was dismissed. His unfair dismissal referral to the CCMA was subsequently unsuccessful, the commissioner having confirmed that his dismissal was both substantively and procedurally fair.

THE PLAINTIFF'S CLAIM

[13] The plaintiff pleads in his Particulars of Claim that the first defendant's grievance letter was defamatory of him in two respects: first, in that it falsely accused him of sexual harassment; and second, in that it referred to him as a "boy," a word which he contends is racially demeaning when applied to an adult Black African male in the South African context.

[14] The plaintiff pleads that both defamatory imputations were made with animus iniuriandi (intent to injure), that they were published to the second defendant and to third parties, and that they have caused him serious injury to his dignity, good name, and reputation.

[15] As to quantum, the plaintiff claims R200,000.00 for injury to his dignity, R200,000.00 for injury to his good name and reputation, and R900,000.00 in respect of future loss of income. The future loss claim is calculated on the basis that the plaintiff will be unable to find employment in the hospitality industry as a result of the defendants' alleged conduct.

[16] In respect of the second defendant, the plaintiff pleads that the second defendant is vicariously liable for the first defendant's letter, the first defendant having been its employee and having acted within the course and scope of her employment when she filed the grievance. Alternatively, the plaintiff pleads that the second defendant is independently liable for formulating charges against him without conducting a proper and independent investigation, thereby "publishing" the alleged defamatory material to the independent chairperson.

[17] The plaintiff further seeks an order directing both defendants to furnish him with a written apology.

[18] The defendants deny that the letter was defamatory. They plead the defences of truth and public benefit, qualified privilege, and fair comment. They further deny

the claimed quantum and contend that the claim for a written apology is legally incompetent.

THE EVIDENCE

[19] The Plaintiff's Evidence

[20] The plaintiff testified in support of his own case. He denied that he had ever sexually harassed the first defendant or any other female co-worker. He denied any prior warnings or disciplinary proceedings related to sexual harassment. However, under cross-examination, he was confronted with documentary evidence of at least two prior sexual harassment complaints against him: one from a Ms D[...] L[...] P [...], dated 17 July 2009, and one from a Ms W[...], dated 25 January 2022.

[21] The plaintiff's handling of these prior complaints was evasive and demonstrably dishonest. He sought to minimise, downplay, and in some cases deny knowledge of incidents that were corroborated by contemporaneous documentary records placed before this court.

[22] The plaintiff denied knowledge of the charge sheet presented against him. When shown page 50 of the bundle, which contained the three charges formulated against him by the second defendant, he was compelled to acknowledge their existence. His attempt to portray himself as a victim of an arbitrary and uninvestigated process was accordingly contradicted by his own evidence.

[23] The plaintiff's dishonesty was particularly apparent in his testimony that the first defendant "called him a boy" as if this were an unprovoked racial attack. Under cross-examination, it was put to him that he had himself referred to the first defendant as a "girl." He did not deny this with any conviction, and his evidence on this point was, as I find, false. The first defendant subsequently confirmed under oath that the plaintiff had in fact called her a "girl."

[24] On the question of publication, the plaintiff admitted that the grievance letter was communicated exclusively within the internal chain of command: from the first

defendant to her line manager, from the line manager to the owner, and thereafter within the disciplinary process. He admitted that the general public had no knowledge of the contents of the letter. This admission is fatal to several aspects of his claim.

[25] On the question of his inability to find alternative employment, the plaintiff was caught in a direct falsehood. He claimed under examination-in-chief that he had been unable to secure work since his dismissal. Under cross-examination, he admitted that he had in fact been employed at Motate Lodge. This was not a minor inconsistency: it went to the heart of his R900,000.00 future loss claim.

[26] Furthermore, the plaintiff admitted that there was no guarantee that he would have remained employed at Romans Pizza until the age of 60. Given his extensive disciplinary record (Exhibit B), this concession was self-evidently correct. When the record of multiple warnings, hearings, and adverse findings is considered, the suggestion that the plaintiff had a reasonable expectation of long-term continued employment is untenable.

[27] The plaintiff admitted that he had apologised to co-workers during the disciplinary process, though he sought to characterise this apology as strategic — motivated by a desire to avoid losing his job — rather than as an acknowledgment of wrongdoing.

[28] Importantly, it was the plaintiff himself who first disclosed the grievance letter to external parties by referencing it in his CCMA referral. The defendants did not broadcast the letter or publicise it in any way. The plaintiff's act of commencing external legal proceedings is the primary vehicle by which the contents of the letter became known beyond the immediate employment setting.

[29] The defendants led unchallenged evidence from a witness, Ms Moteme, that the plaintiff had stated to co-workers that the employer would not dismiss him because it would then be obliged to pay him a large sum of money. This evidence, which I accept as reliable, paints a picture not of a genuinely aggrieved victim of defamation but of a person who anticipated the legal and financial consequences of

disciplinary action and sought, from the outset, to convert his misconduct into a financial opportunity. The claim appears to be calculated and opportunistic.

EVIDENCE OF MR PIETER VAN DER MERWE (OWNER / SECOND DEFENDANT)

[30] Mr Pieter van der Merwe testified credibly and without contradiction in material respects. He confirmed that the plaintiff had been dismissed after numerous warnings and a lengthy disciplinary record extending over many years. He described the plaintiff as a repeat offender who had been given numerous opportunities to reform his conduct.

[31] Mr van der Merwe testified that upon receiving the first defendant's grievance letter, he did not act precipitously. He conducted a preliminary investigation: he interviewed the first defendant, reviewed available CCTV footage, and consulted with an external labour consultant before formulating any charges. He found the first defendant to be credible and consistent.

[32] He confirmed that three charges were formulated: gross insolence, gross negligence regarding food safety, and sexual harassment. These charges were formulated in consultation with the external labour consultant, with the specific intention of complying with applicable labour legislation and not to harm or defame the plaintiff. The formulation of charges in a disciplinary context is a statutory obligation, not a discretionary publication.

[33] Mr van der Merwe confirmed that the plaintiff was found guilty by the independent chairperson on all three charges. Although the plaintiff had pleaded not guilty, he admitted to certain elements of the conduct attributed to him during the proceedings.

[34] Mr van der Merwe confirmed that this was not the first occasion on which a sexual harassment complaint had been made against the plaintiff. He produced documentary evidence of the prior complaints: the D[...] L[...] P[...] complaint of 17 July 2009 and the W[...] complaint of 25 January 2022. He confirmed that these were

on the plaintiff's file and that they were taken into account when assessing the appropriate sanction.

[35] He confirmed that the grievance letter was not published to any member of the public, to any media outlet, or to any person outside the direct chain of the disciplinary process. The letter was shared only with the line manager, himself, and the independent chairperson.

[36] Mr van der Merwe confirmed that the plaintiff had no reasonable expectation of employment until the age of 60, given his conduct record. He stated plainly that the plaintiff had no future at the company and that his pattern of behaviour had repeatedly undermined the working environment for other employees, particularly female employees.

EVIDENCE OF JOHANES TOOLA (CO-WORKER)

[37] Mr Johanes Toola, a co-worker of the plaintiff, testified on behalf of the defendants. He described the plaintiff as a person who constantly used vulgar and inappropriate language in the workplace and who did not treat his co-workers with respect. He testified that the plaintiff had on a prior occasion physically assaulted him and that the plaintiff had been subjected to a disciplinary hearing as a result of this assault.

[38] Mr Toola's evidence was consistent and unshaken in cross-examination. I found him to be a credible witness.

EVIDENCE OF DOLTHA LEHONG (CO-WORKER)

[39] Ms Doltha Lehong, also a co-worker, testified that the plaintiff had no respect for women in the workplace. She described a working environment in which the plaintiff would use vulgar language, make inappropriate comments about women's bodies, and physically touch female co-workers without their consent — in her words, "slapping their asses." She also testified that the plaintiff had threatened to poison

the staff's food, a deeply disturbing allegation that was not effectively challenged in cross-examination.

[40] Ms Lehong was careful and measured in her evidence. She stated explicitly that she did not have a personal problem with the plaintiff as an individual but that his treatment of women was consistently disrespectful and constituted an ongoing hazard in the workplace. I found her evidence credible and reliable.

EVIDENCE OF MATEMA MESO (FORMER CO-WORKER)

[41] Ms Matema Meso, a former co-worker of the plaintiff, testified that the plaintiff was a bully who sought to control and dominate those around him. She described him as having no respect for women and said she never felt safe in his presence.

[42] Ms Meso testified that the plaintiff would walk into the unisex changing room while female employees were present and changing, deliberately creating a situation of vulnerability and discomfort. She testified that he had physically touched her inappropriately on multiple occasions, including "slapping her on the bum."

[43] A significant aspect of Ms Meso's evidence arose incidentally but carries considerable weight in the analysis of the "boy" allegation. In the course of describing the changing-room arrangements, Ms Meso referred naturally and without any apparent self-consciousness to "the boys and the girls" who used the changing room. She used these terms as colloquial, gender-descriptive shorthand, without any racial dimension or intent to demean. Counsel for the plaintiff raised no objection to this usage, nor sought to cross-examine Ms Meso on it. This usage corroborates the defendants' case that, within the vocabulary of this particular workplace, the words "boy" and "girl" were used colloquially and without racial loading.

[44] I found Ms Meso to be an honest and forthright witness. Her account was consistent, detailed, and corroborated by the evidence of the other female witnesses.

EVIDENCE OF THE FIRST DEFENDANT (MS L[...] F[...])

[45] The first defendant testified that she wrote the grievance letter of 5 November 2022 because she was, in her own words, "sick and tired" of the plaintiff's conduct and genuinely afraid for her life and safety. She described a prolonged pattern of sexual harassment during which the plaintiff would touch her inappropriately, slap her on the buttocks, and stand directly behind her with his private parts pressing against her body. She described the plaintiff as aggressive, intimidating, and physically threatening.

[46] The first defendant testified that the plaintiff had, on one occasion, produced a knife during a confrontation and had physically pushed her. She was afraid of him. She did not write the letter lightly. She wrote it because she had exhausted her patience and was genuinely fearful.

[47] She testified that she delivered the letter to her line manager, Mr Lovemore, in the normal course of the employment grievance procedure and had no intention of having it published beyond that internal channel.

[48] On the specific question of the word "boy," the first defendant made a concession under cross-examination: she acknowledged that she had used the word "out of spite" in the moment. This concession was relied upon heavily by the plaintiff's counsel as evidence of animus iniuriandi. I deal with the legal consequences of this concession in detail below. However, it is important to place this concession in its proper context: the first defendant was a victim of sustained sexual harassment who, at the moment she wrote the letter, was frightened for her safety. She described herself as "sick and tired." The use of the word "boy" in that context — in a letter written in extremis by a young Black woman about the conduct of a male colleague who had been persistently violating her physical integrity — must be assessed within that human reality.

[49] The first defendant confirmed that the incidents of harassment occurred in the changing room and in the passage between the kitchen and the changing room, areas that were not covered by CCTV cameras. This explains why the CCTV review conducted by Mr van der Merwe did not capture the specific incidents described by the first defendant, but it does not diminish the credibility of her account.

[50] The first defendant confirmed that she herself had no intention of damaging the plaintiff's reputation or image. Her intention was to report workplace misconduct through the proper internal channels. This is entirely consistent with her evidence that she gave the letter to her line manager and to no one else.

[51] I found the first defendant to be a credible and compelling witness. Her account was corroborated in all material respects by the evidence of Ms Lehong, Ms Meso, and the documentary record of prior complaints. I accept her evidence in its entirety.

THE LAW OF DEFAMATION

[52] The elements of the delict of defamation under South African law are well established. As authoritatively confirmed by the Constitutional Court in *Le Roux v Dey*¹, a plaintiff must prove: (a) that the defendant published a statement; (b) that the statement concerned the plaintiff; and (c) that the statement bore a defamatory meaning.

[53] Once a plaintiff has established publication and defamatory meaning, both the element of wrongfulness and the element of animus iniuriandi (intention to injure) are presumed. The burden then shifts to the defendant to rebut one or both of these presumptions or to establish a recognised defence.

[54] The recognised defences to defamation in South African law include: (a) truth and public interest or public benefit; (b) qualified privilege; (c) fair comment on a matter of public interest; and (d) consent.

[55] The standard for determining whether a statement carries a defamatory meaning is objective. The question is whether a reasonable person of ordinary intelligence, reading or hearing the statement in context, would understand it to

¹ *Le Roux v Dey* 2011 (3) SA 274 (CC).

convey a meaning that tends to lower the plaintiff in the estimation of right-thinking members of society. This test was affirmed in *Heroldt v Wills*² and *Isparta v Richter*³.

[56] The reasonable person against whom the test is measured is neither hypersensitive nor entirely impervious to insult or affront. Courts will not make a finding of defamation in every case where a person subjectively experiences a statement as hurtful, embarrassing, or offensive. The impairment must be of a nature and degree that the law recognises as worthy of a remedy.

[57] Furthermore, the test is contextual. The meaning of a publication is determined not by isolating individual words or phrases but by considering the publication as a whole, in its context, and through the eyes of a reasonable reader. As the Supreme Court of Appeal held in *Sindani v Van der Merwe*⁴, the court must identify the "sting" of the publication — the central, operative defamatory imputation — rather than fastening on peripheral or isolated expressions.

[58] Defamation law serves the constitutionally protected rights of dignity (section 10 of the Constitution) and reputation. However, these rights must be weighed against equally important rights: the right to freedom of expression (section 16), the right to dignity of the complainant (who, in this case, is the first defendant as victim), and the right of employees to report workplace misconduct without fear of reprisal. A legal system that allows a harasser to sue his victim for reporting his conduct would fundamentally subvert these constitutional values.

[59] Neethling, Potgieter and Visser, in their authoritative work on the law of delict,⁵ describe defamation as a wrongful and intentional publication of words or conduct that impairs the esteem or good name of the plaintiff. All elements must be present. In this case, as I find below, several critical elements are absent.

² 2013 (2) SA 530 (GSJ), Par 26.

³ 2013 (6) SA 529 (GP), Par 23.

⁴ 2002 (2) SA 32 (SCA), Par 11.

⁵ Neethling, Potgieter & Visser, *Law of Delict*, 7th ed (2015) at 307-308.

[60] In assessing both the defamatory nature of the communication and the appropriate remedy, courts must also take into account the conduct of the plaintiff. A plaintiff whose own conduct is disreputable, indecent, or criminal cannot claim the full measure of dignity and reputational protection that the law affords to a person of good character. This principle, associated with the cases of *Mogale v Seima*⁶ and *Khumalo v Holomisa*⁷, informs the court's assessment in this matter.

[61] With these principles in mind, I turn to the defences raised by the defendants.

QUALIFIED PRIVILEGE

[62] The doctrine of qualified privilege provides that a communication made in the discharge of a legal, moral, or social duty, or in the furtherance of a legitimate interest, is protected against an action for defamation, even if the communication turns out to be untrue or hurtful, provided it is made without malice. Where a qualified privileged occasion exists, the law presumes that the person making the statement lacked the intention to injure.

[63] The most recent and directly applicable authority on this question in the context of workplace grievances is the decision of the full bench of the Eastern Cape Division (Mthatha) in *Khuza and Another v Khanyiwe*⁸. The full bench held unequivocally that a workplace disciplinary investigation and process constitutes a "qualified privileged occasion." On such an occasion, statements made in the course of and for the purposes of the process are presumptively protected, provided they are made without malice and within the scope of the duty or interest concerned.

[64] I respectfully align myself with the reasoning in *Khuza* and hold that it is directly applicable to the facts of this case. The grievance letter of 5 November 2022 was written and submitted by the first defendant to her line manager, in the course of

⁶ 2008 (5) SA 637 (SCA), Par 15.

⁷ 2002 (5) SA 401 (CC) in which the court determined, amongst others in Par 28 that that reputation is protected as a manifestation of human dignity, which must be balanced contextually against freedom of expression.

⁸ [2025] ZAECHMHC 17, decided by the full bench of the Eastern Cape Division, Mthatha, on 4 March 2025.

her employment, in order to report conduct that she – on the evidence, with good reason – believed constituted sexual harassment. This is precisely the kind of communication that the doctrine of qualified privilege is designed to protect.

[65] The rationale is clear and compelling. The Labour Relations Act,⁹ the Employment Equity Act, and the Code of Good Practice on the Handling of Sexual Harassment Cases all impose obligations on both employees and employers in respect of workplace sexual harassment. An employee who files a grievance about sexual harassment is discharging a legitimate right – indeed a protected act – under this legislative framework. To expose such an employee to a defamation suit by the alleged harasser would fundamentally undermine the protective purpose of the legislation.

[66] Similarly, the second defendant, upon receiving the grievance, was under a legal and statutory obligation to investigate the complaint and to take appropriate action. The formulation of charges, the conduct of a disciplinary hearing, and the imposition of a sanction were all steps taken in discharge of those statutory obligations. These were not voluntary acts of publication; they were compelled by law and required by the Code of Good Practice.

[67] The grievance letter was transmitted through the proper and expected chain of command: from the first defendant to her line manager, from the line manager to the owner, and from the owner to the independent disciplinary chairperson. There was no publication to the general public. There was no broadcast, no media contact, and no disclosure to persons outside the employment relationship. The plaintiff himself conceded this under cross-examination.

[68] The scope of the publication was strictly limited to those persons who had a duty to receive and act upon it. This is the hallmark of a qualified privileged occasion. The communication was proportionate to its purpose and contained within the appropriate institutional structure.

⁹ Labour Relations Act 66 of 1995; Employment Equity Act 55 of 1998; Code of Good Practice on the Handling of Sexual Harassment Cases, GN 1367 of 2005.

[69] Can the qualified privilege be defeated? The plaintiff argues that the first defendant's concession under cross-examination — that she used the word "boy" "out of spite" — constitutes evidence of malice, which would defeat the privilege. I address this argument in detail in the section dealing with the "boy" allegation below.

[70] Even if I were to accept that the use of the word “boy” was motivated by some degree of animus, this does not necessarily vitiate the privilege in respect of the entire communication. The doctrine of qualified privilege attaches to the occasion as a whole, not to every individual word or expression contained in the privileged document. An occasion does not lose its privileged character merely because the speaker, in the course of the communication, uses a phrase that could be characterised as an expression of personal feeling. See *Cullen v Jonas and Another*¹⁰, where the court emphasised that the privilege must be assessed in the round, taking account of the dominant purpose and the overall character of the communication.

[71] The dominant purpose of the first defendant's letter was the reporting of workplace sexual harassment to management. That purpose was entirely legitimate. The fact that one phrase within the letter may have been animated by personal feeling does not transform an otherwise protected grievance into a malicious attack on the plaintiff's reputation. The letter as a whole was a legitimate exercise of the first defendant's employment rights. It was not written with the primary or dominant purpose of injuring the plaintiff.

[72] I accordingly find that both the first and second defendants are entitled to rely on the defence of qualified privilege in respect of the grievance letter and the subsequent disciplinary process. This is, in my view, the decisive finding that disposes of the plaintiff's claim.

¹⁰ (3027/2021) ZAECBHC (unreported) in which the recites the classic position that “it is the occasion that is privileged and not the statement” and that the test is objective, judged by the reasonable person, with reference to the **relationship between the parties and the relevant surrounding circumstances**. This frames privilege as something to be assessed in the round, not piecemeal.

[73] Nevertheless, given the importance of the legal issues and the breadth of the arguments advanced, I proceed to address the other defences and arguments in turn.

THE "BOY" ALLEGATION

[74] I turn to what the plaintiff's counsel characterised as the centrepiece of the defamation claim: the use of the word "boy" in the grievance letter. This argument requires careful and rigorous analysis, both because of its potential constitutional dimensions and because it was the subject of the most extensive cross-examination and legal argument at trial.

[75] As a first and critical observation, the word "boy" was not pleaded as a separate or independent cause of action. A careful reading of paragraphs 8 to 13 of the Particulars of Claim reveals that the plaintiff presented the grievance letter as a single publication containing a composite defamatory meaning: namely, that the plaintiff was a sexual harasser who behaved in a manner consistent with the demeaning appellation "boy." The sexual harassment allegation and the use of the word "boy" were pleaded together as the sting of a single publication, not as two independent torts.

[76] Per *Sindani v Van der Merwe*, the court must determine the ordinary, natural meaning of the publication as a whole by looking at the sting — the central, operative defamatory imputation — rather than fastening on isolated words. On any fair reading of the grievance letter, the sting of the complaint is the allegation of sexual harassment. The word "boy" is a peripheral descriptor within that broader communication. No innuendo was properly pleaded.

[77] Furthermore, the plaintiff's counsel, in the course of cross-examination, elicited the first defendant's concession that she used the word "out of spite." However, the plaintiff's counsel failed to plead innuendo — that is, the plaintiff did not properly allege in the Particulars of Claim that the word "boy," in context and having regard to extrinsic facts, bore a meaning beyond its ordinary and natural meaning. Without a proper pleading of innuendo, the court cannot receive extrinsic evidence

going to the racially charged historical associations of the word as a free-standing basis of claim. The pleading deficiency is fatal to this aspect of the case.

[78] I further note that no expert evidence was led regarding the cultural significance or historical connotations of the word "boy" in the South African context. Courts cannot simply assume, without evidence, the precise degree of racial or other loading that a particular word carries in a specific social setting, particularly when the evidentiary record before this court points in a different and contradictory direction.

[79] On the merits, even accepting for purposes of argument that the word "boy," when used by one person to describe an adult Black African male, can in certain historical and social contexts carry a racially demeaning connotation rooted in South Africa's colonial and apartheid past, the question for this court is not whether the word has ever been used as a tool of racial subordination but whether it was so used in these specific circumstances, and whether a reasonable person would interpret it as such.

[80] The answer, when one considers all the circumstances, is emphatically no. I set out the reasons for this conclusion.

[81] First, the first defendant is herself a Black African woman. The paradigmatic colonial and apartheid-era use of "boy" as a racial slur was embedded in a specific power structure: a white person deploying the word to subordinate a Black person in order to reinforce racial hierarchy and deny the Black person's adulthood, dignity, and full humanity. That dynamic is entirely absent in this case. The first defendant was not a white superior deploying the language of racial oppression. She was a young Black woman, a victim of sexual harassment, writing a distressed grievance letter about the conduct of a male colleague who had repeatedly violated her dignity and physical integrity. The racial dimension that might in other contexts invest the word with its most toxic charge is substantially and materially attenuated by this factual reality.

[82] Second, the context was a workplace grievance about sexual harassment. A reasonable person reading the letter would focus on its substance — the serious and

detailed allegations of sexual misconduct — not on a single colloquial descriptor. The word "boy" in this context would most naturally be understood as expressing the first defendant's frustration with the plaintiff's behaviour, not as a racial or otherwise derogatory statement.

[83] Third, and perhaps most significantly, the plaintiff himself used the equivalent term "girl" when referring to the first defendant. This was put to the plaintiff under cross-examination and corroborated by the first defendant's own testimony. If the plaintiff regarded it as appropriate to use "girl" as a descriptor for an adult woman in the context of their interaction, he is not well-positioned to claim racial injury from the use of the reciprocal term. The use of these terms was evidently part of the colloquial register of this workplace, devoid of the specific historical baggage that the plaintiff now seeks to invoke.

[84] Fourth, the evidence of Ms Matema Meso, the fourth witness, is instructive. In describing the changing-room arrangements at the workplace, she referred naturally and unselfconsciously to "the boys and the girls." This usage was accepted without objection by the plaintiff's counsel and without cross-examination. It demonstrates conclusively that in the shared internal vocabulary of this specific workplace, the words "boy" and "girl" were used as informal gender descriptors without racial content. This evidentiary context negates the plaintiff's claim that the use of "boy" in the grievance letter would be understood by a reasonable person in this setting as a racial or otherwise derogatory affront.

[85] Fifth, there is the matter of the plaintiff's own conduct and standing. The plaintiff was found guilty of sexually harassing the very person who wrote the grievance letter. He had a documented history of violating the physical boundaries and dignity of female co-workers over many years. Six witnesses testified, consistently and with corroborating detail, to a pattern of conduct that was coercive, demeaning, and at times threatening. A person who has systematically denied the dignity of others — particularly by subjecting them to unwanted sexual touching — is poorly placed to claim, with any moral or legal force, that a single word in his victim's grievance letter constitutes a serious affront to his dignity.

[86] The Constitutional Court in *Khumalo v Holomisa* recognised that dignity is not an abstract and fixed quantum that exists independently of social context. It is shaped by and reflected in one's conduct and one's relationships with others. A person who treats others without dignity, who has been found guilty of sexual harassment, who has accumulated a record of disciplinary violations, and who has repeatedly disregarded the dignity and bodily autonomy of female co-workers, cannot claim the full measure of reputational protection that the law accords to a person of unblemished character.

[87] Sixth, the first defendant's concession that she used the word "out of spite" must be assessed in its proper human context. She was a victim, not an aggressor. She wrote the letter because she was frightened, exhausted, and desperate for the harassment to stop. The "spite" she expressed was the natural and understandable reaction of a person who had been subjected to a sustained course of sexual harassment. Even accepting the concession fully, it does not transform a legitimate workplace grievance into a calculated campaign of racial vilification. The doctrine of qualified privilege, as I have held above, survives this concession.

[88] Seventh, this court must be alive to the systemic implications of the plaintiff's argument. To hold that a victim of sexual harassment defamed her harasser by including a single colloquial expression in her grievance letter would create a chilling effect on workplace reporting of sexual misconduct that would be fundamentally inconsistent with the Constitution, the Labour Relations Act, the Employment Equity Act, and the Code of Good Practice. This court will not countenance such a result.

[89] Eighth, and as a matter of overriding principle, this court will not allow a harasser to weaponise a single word in a victim's grievance letter to extract monetary damages from the very person he was harassing. To permit such a claim would be a manifest injustice and an affront to the constitutional values of dignity, equality, and freedom. It would invert the moral and legal order of the workplace and signal to victims of harassment that speaking out carries financial risk. This court emphatically rejects that proposition.

[90] I accordingly find, on all the above grounds, that the use of the word "boy" in the grievance letter does not, in the circumstances of this case, constitute a defamatory statement that would cause a reasonable person of ordinary intelligence, in possession of the full context, to regard the plaintiff as lowered in the estimation of right-thinking members of society. Any lingering discomfort that the word might ordinarily generate is overwhelmed by the full picture: a guilty harasser, a frightened victim, an internal grievance, a colloquial workplace register, and a plaintiff who used the reciprocal term himself.

[91] Even if I were wrong on this point, the defence of qualified privilege, as I have found above, independently provides a complete answer to the plaintiff's reliance on this word.

THE OBJECTIVE REASONABLE PERSON TEST AND ROBUSTNESS

[92] The test for defamatory meaning, as confirmed by the Constitutional Court in *Le Roux v Dey*, is whether the statement would tend to lower the plaintiff's reputation in the estimation of right-thinking members of society. The test is objective and inherently contextual.

[93] As noted in *Heroldt v Wills* and confirmed in *Isparta v Richter*, the reasonable person is neither hyper-sensitive nor completely impervious to insult. Courts will not hold that defamation has occurred simply because a plaintiff subjectively feels that a statement was hurtful, unfair, or embarrassing. There is an implicit element of robustness built into the reasonable person standard: the law expects a degree of resilience in dealing with interpersonal friction, workplace criticism, and the ordinary vicissitudes of human interaction.

[94] The courts have further recognised that the seriousness of the impairment must meet a minimum threshold. In *S v Sharp*¹¹, it was noted that the impairment of dignity must be serious, not merely trivial. The seriousness threshold serves to filter

¹¹ S v Sharp 1981 (2) SA 318 (N).

out claims founded on excessive sensitivity, thin skin, or an inflated sense of personal honour.

[95] In *Mogale v Seima*,¹² Harms JA emphasised that in assessing claims for injury to reputation and dignity, courts must weigh the actual reputation, character, and conduct of the plaintiff. A plaintiff whose own conduct is indecent, aggressive, disreputable, or otherwise morally compromised is assessed by a more exacting standard. The law does not afford to a person of bad character the same measure of reputational protection as it does to a person of good character.

[96] Applying these principles to the present case: the plaintiff is not a person whose esteem has been unjustly lowered by a false and malicious publication. He is a person who was found guilty by an independent tribunal of sexually harassing the author of the grievance letter, who had prior complaints of sexual harassment on his record, whose conduct was described by multiple witnesses as habitually vulgar, physically intrusive, threatening, and disrespectful toward women, and whose disciplinary history at the second defendant stretched over nearly two decades.

[97] Would a reasonable person, in possession of all these facts, regard the plaintiff's reputation as having been lowered by the grievance letter in a manner that the law should remedy? I think not. The plaintiff's reputation, such as it was, had been substantially impaired by his own conduct long before the grievance letter was written. An employer, a disciplinary chairperson, and a CCMA commissioner had all concluded, independently, that his conduct fell far below the standards expected of an employee in a shared working environment.

[98] The plaintiff asks this court to treat him as a person of good standing who was arbitrarily and falsely accused of sexual harassment. The evidence conclusively demonstrates the opposite. He was accurately accused, found guilty on his own partial admissions and on credible witness testimony, and dismissed after a fair process. In these circumstances, the objective reasonable person test simply does not yield a finding in the plaintiff's favour.

¹² Par 15.

[99] I find that the plaintiff has failed to satisfy the objective test for defamation in respect of either the sexual harassment allegation or the use of the word "boy." The claims fail on this ground as well.

THE PLAINTIFF'S OWN CONDUCT

[100] The evidence relating to the plaintiff's conduct at the workplace was overwhelming, consistent, and largely unchallenged in its substance. Six witnesses testified to aspects of his behaviour. Their accounts, taken together, paint a detailed and deeply troubling picture.

[101] The first defendant testified to a sustained course of sexual harassment: unwanted touching, slapping of her buttocks, pressing his private parts against her body from behind, aggressive conduct including the production of a knife during a confrontation, and physical pushing. She was afraid of him. She wrote the grievance letter because she was "sick and tired" and felt she had no other option.

[102] Ms Lehong testified to a consistent pattern of the plaintiff touching female co-workers without their consent, making vulgar comments about women's bodies, and threatening to poison the staff food. Ms Meso testified that the plaintiff would walk into the unisex changing room while women were present and changing, that he had no respect for women, that she had never felt safe in his presence, and that he had physically touched her inappropriately on multiple occasions. Mr Toola testified that the plaintiff had physically assaulted him and was generally violent and disrespectful.

[103] The documentary record confirms at least two prior sexual harassment complaints (D[...] L[...] P[...], 2009; W[...], 2022) and an extensive disciplinary record spanning nearly two decades. The plaintiff was found guilty by an independent disciplinary chairperson and by the CCMA. His dismissal was confirmed as substantively fair.

[104] The principle of *tu quoque* — that a plaintiff who has contributed to the situation through his own egregious conduct cannot claim the same measure of

sympathy or legal protection as an innocent party — applies with full force in this case. The plaintiff brought this claim against the very victim of his own sustained misconduct. He did so having been found guilty of that misconduct by independent tribunals. That is a position of profound moral and legal compromise.

[105] A court of law is an institution designed to vindicate genuine rights and to provide remedies for genuine wrongs. It is not designed to assist a person in avoiding the natural and just consequences of his own misconduct or in transferring to his victim the financial and reputational costs of those consequences.

[106] The plaintiff's conduct comprehensively demolished any claim to good reputation or dignity in respect of the subject matter of the grievance letter. He had, by his own acts, reduced his reputational standing in the eyes of his co-workers to the point where the grievance letter did not and could not have materially lowered him in their estimation beyond what his own conduct had already accomplished.

TRUTH AS A DEFENCE

[107] In the alternative to my findings on qualified privilege and the objective test, I find that the defendants are entitled to succeed on the defence of truth and public benefit.

[108] The sting of the grievance letter is the allegation of sexual harassment. That allegation was vindicated by the independent disciplinary hearing, which found the plaintiff guilty on the charge of sexual harassment. The finding was upheld by the CCMA commissioner on review. A finding of guilt by an independent tribunal — particularly one from which the plaintiff had the right of appeal to the Labour Court — constitutes a vindication of the allegation in every meaningful sense. The allegation was substantially true.

[109] Truth is a complete defence to defamation under South African law where the publication was also in the public interest or for the public benefit. The reporting of workplace sexual harassment by a victim to her employer serves the public interest in promoting dignified and safe working environments. The Code of Good Practice

on the Handling of Sexual Harassment Cases recognises the public interest dimension of such reporting.

[110] The first defendant's account of the plaintiff's conduct was corroborated in material respects by the evidence of Ms Lehong, Ms Meso, Mr Toola, and Mr van der Merwe. The corroboration extends across both the specific incidents described in the letter and the broader pattern of conduct attributed to the plaintiff. I have already found the first defendant to be a credible witness. There is no basis on which to doubt the substantial truth of the allegations she made.

[111] I accordingly find that even absent the defence of qualified privilege, the defendants have established the defence of truth and public benefit. The plaintiff's claim fails on this ground as well.

THE CLAIM FOR FUTURE LOSS OF INCOME

[112] The plaintiff claims R900,000.00 in respect of estimated future loss of income. He alleges that as a result of the defendants' conduct, he has been unable to find employment in the hospitality industry and will continue to suffer income loss until the age of 60. This claim is, as I find, entirely unsustainable on the evidence.

[113] As a preliminary matter, a claim for future loss of income in a defamation action requires the plaintiff to establish a causal link between the defamatory publication and his inability to find work. Specifically, the plaintiff must show that prospective employers were made aware of the defamatory content of the publication and that this caused them to decline to employ him. The plaintiff has not established this causal link.

[114] The plaintiff admitted under cross-examination that the grievance letter was published only within the internal disciplinary process and was not made available to any member of the public or to any prospective employer. This concession is fatal to the future income claim. Prospective employers could not have been influenced by a document they had no knowledge of.

[115] Furthermore, under South African law, an employer is not legally permitted to disclose the reasons for an employee's departure or dismissal to prospective employers. Any prospective employer conducting a reference check would not have been informed of the contents of the grievance letter or the nature of the charges against the plaintiff. The suggestion that the letter caused the plaintiff's alleged unemployment is speculative and evidentially unsupported.

[116] It was the plaintiff himself who, by commencing CCMA proceedings and subsequently this litigation, placed the grievance letter in the public domain. If there is any harm to his employability arising from the contents of the letter becoming known, that harm flows from his own decision to pursue external proceedings.

[117] The plaintiff's claim to have been unable to find work since his dismissal was directly contradicted by his admission under cross-examination that he had been employed at Motate Lodge. This dishonesty fundamentally undermines the foundation of the R900,000.00 claim.

[118] Moreover, Mr van der Merwe confirmed that even before the grievance letter, the plaintiff had no reasonable prospect of long-term continued employment at the second defendant, given his extensive disciplinary record. The plaintiff himself admitted that there was no guarantee that he would have remained employed until the age of 60. Given Exhibit B, this concession was unavoidable. A person with a disciplinary record of that nature had no reasonable expectation of uninterrupted employment for the period claimed.

[119] The unchallenged evidence of Ms Moteme — that the plaintiff had informed co-workers that the employer would be obliged to pay him a large amount of money if it dismissed him — further undermines the credibility of the income loss claim. It suggests that the claim was anticipated and calculated rather than the product of genuine financial loss caused by the defendants' conduct. I accordingly dismiss the claim for future loss of income in its entirety.

THE CLAIM FOR A WRITTEN APOLOGY

[120] The plaintiff seeks an order directing both defendants to furnish him with a written apology. This relief is legally incompetent.

[121] The Constitutional Court confirmed in *Le Roux v Dey*¹³ that a court cannot compel a party to issue an apology as part of a judgment in a defamation matter. To do so would compel the expression of a sentiment that the party may not genuinely hold, which would itself constitute an infringement of the right to freedom of expression guaranteed by section 16 of the Constitution. An enforced apology is in any event meaningless and affords no genuine vindication.

[122] This aspect of the plaintiff's claim is dismissed on the grounds that it is legally incompetent and constitutionally impermissible.

COSTS

[123] The question of costs is in the discretion of this court, exercised judicially and having regard to all the circumstances. The general rule is that costs follow the event. The defendants have succeeded entirely. The plaintiff's claim was dismissed in full. Costs accordingly follow the event in favour of the defendants.

[124] The defendants seek costs on the attorney and client scale. I must consider whether the circumstances of this case justify a departure from the ordinary party and party scale in favour of the punitive scale.

[125] Attorney and client costs are awarded in circumstances where the conduct of the unsuccessful party has been vexatious, oppressive, or constitutes an abuse of the court's process. They are intended both to compensate the successful party fully for the costs it has actually incurred and to signal the court's strong disapproval of conduct that has wasted judicial resources.

[126] I am satisfied that attorney and client costs are warranted in this case for the following cumulative reasons.

[127] First, the claim was brought by a person who had been found guilty of sexually harassing the very defendant he now sues for defamation. The attempt to convert a just and fair outcome of a disciplinary process — including the victim's exercise of her right to report harassment — into a claim for monetary damages borders on a perverse inversion of the purpose of defamation law. The plaintiff, having been found guilty by an independent tribunal and confirmed by the CCMA, seeks to relitigate his guilt by another name in this court.

[128] Second, the plaintiff was dishonest in his testimony on multiple material aspects. He attempted to conceal his prior sexual harassment complaints, denied knowledge of charges that were on paper before him, fabricated or exaggerated his inability to find employment, and sought to present himself as a victim of an uninvestigated and arbitrary process. This court finds his evidence to be unreliable and at times deliberately false.

[129] Third, the claim was in the assessment of this court opportunistic from the outset. The unchallenged evidence of Ms Moteme suggests that the plaintiff had anticipated the financial consequences of his dismissal and had planned to extract financial benefit from the defendants before the grievance letter was even processed. The claim was not a genuine response to genuine injury.

[130] Fourth, the claim as framed and conducted wasted this court's time and the defendants' resources. The plaintiff's counsel relied heavily on a cross-examination concession about the word "boy" but failed to plead innuendo, failed to adduce any expert evidence on the cultural significance of the word, and failed to establish the word as an independent actionable cause of action. The strategic failure of the plaintiff's case was compounded by its moral unsoundness.

[131] As to the scale for counsel's fees: I am satisfied that this is an appropriate case in which to recommend that the taxing master allow counsel's fees on scale C. The proceedings involved a trial of more than one day, an extensive record of documentary evidence, multiple witnesses, and complex legal argument spanning defamation law, qualified privilege, constitutional rights, and labour law. The

defendants' counsel was required to prepare and present an extensive and meritorious defence. The complexity of the legal issues traversed and the duration of the trial justify scale C.

ORDER

131. In the result, the following order is made:

1. The plaintiff's claim against both the first and second defendants is dismissed in its entirety.
2. The plaintiff is ordered to pay the costs of the first and second defendants on the attorney and client scale, such costs to include the costs of counsel, which this court orders be allowed by the taxing master on scale C.

DIAMOND AJ
ACTING JUDGE OF THE HIGH COURT
LIMPOPO DIVISION, POLOKWANE

Date of hearing: 17 November 2025

Date of judgment: 9 April 2026

This judgment was handed down electronically by circulation to the parties' representatives by email. The date and time for hand-down of the judgment is deemed to be 10 APRIL 2026.

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