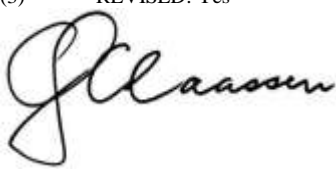


IN THE NORTH GAUTENG HIGH COURT OF SOUTH AFRICA
PRETORIA

CASE NO: 2011/15359

DATE: 28-01-2014

DELETE WHICHEVER IS NOT APPLICABLE	
(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED: Yes
	
SIGNATURE	<u>17 July 2014</u> DATE

In the matter between:

ALFRED MOSELAKGOMO

Plaintiff

And

MEDIA 24 LTD
THEMBA KHUMALO
RIFUMO MALELEKE
J. MASOMBUKA

1st Defendant
2nd Defendant
3rd Defendant
Third Party

J U D G M E N T

C. J. CLAASSEN J:

[1] In this matter the plaintiff sues the three defendants for damages allegedly suffered as a result of having been defamed in an article published in the Daily Sun on 17 March 2010. There is also a counterclaim by the defendants. However, the parties have agreed in terms of Rule 33(4) that it would be cost-effective to postpone the

counterclaim and to deal with the plaintiff's claim on the basis of a separate legal argument. It was further agreed that, if the legal argument is upheld in favour of the defendants, it would put an end to the plaintiff's case. Alternatively, if the legal argument goes the way of the plaintiff, then the defendants would enter the fray and lead evidence regarding their respective defences that they have pleaded.

[2] The parties have prepared a draft order which I will make an order in terms of Rule 33(4) of the Uniform Rules of Court. This draft order reads as follows:

"Having heard the legal representatives for the parties, the following order is made:

1. The first issue to be decided is whether the article is defamatory of an concerning the plaintiff in the manner pleaded by the plaintiff in paragraph 7 of his particulars of claim, i.e. whether the article conveys or attempts to convey to the reader that the plaintiff is corrupt and abuses his position as a journalist for personal gain and enrichment.
2. If the question in 1 above is decided against the plaintiff, it is dispositive of the plaintiff's case.
3. If the question in 1 above is decided in favour of the plaintiff, the defendants will commence to lead evidence in terms of their defences as pleaded in paragraph 7 of their amended plea and the plaintiff is entitled to lead evidence in rebuttal and also in respect of his damages.
4. The defendants' counterclaim against the plaintiff and claim against the Third party are postponed sine die."

[3] The manner in which the plaintiff pleads the defamation appears from paragraphs 6, 7 and 8 of his particulars of claim:

- "6. The said article stated of plaintiff that plaintiff faces allegations that he took a R60 000 bribe from a top politician in Mpumalanga as a result whereof he was suspended.

7. The article read within the context of its publication, conveys or attempts to convey to the reader that plaintiff is corrupt and abuses his position as a journalist for personal gains and enrichment.
8. The statement as published by the defendants was wrongful and defamatory of the plaintiff."

[4] It will be noticed that no innuendo of any kind is pleaded. The plaintiff's case therefore rests upon an interpretation of the article as being *per se* defamatory of the plaintiff. If the article cannot be interpreted as such, then the plaintiff's case must fail. It is therefore necessary to look at the contents of the article. It appears as annexure "A" to the plaintiff's particulars of claim and reads as follows:

"Two newspaper journalists have been suspended over allegations of bribery in separate cases. They are Alfred Moselakgomo who is based in Mpumalanga and Alex Matlala who reports from Limpopo. Both write for the Johannesburg Daily Sowetan. Daily Sun has been told allegations of bribery are involved. The suspended journalists are said to have taken money from politicians to write negative articles about their rivals. A caller to Capricorn FM, a radio station in Polokwane claimed to know all about Matlala's alleged sponsored articles. Matlala's expensive lifestyle does not, according to a good source, match his salary. Moselakgomo also faces allegations that he took a R60 000 bribe from a top politician in Mpumalanga. But Sowetan's editor, Fikile-Ntsikelelo Moya said the pair were merely suspended and have not yet been found guilty of any wrongdoing.

Moya would also not give details. Investigations were still under way."

[5] To determine whether a statement is to be regarded as *per se* defamatory, the test is whether a reasonable reader would infer from defamed in some nefarious way. Emphasis has been placed by counsel for the plaintiff that serious allegations are made in this particular article. That of course is correct, but they are only allegations. Nowhere in the article is any statement of fact made that the plaintiff has been found guilty of such nefarious conduct.

- [6] In my view, it would be quite apparent to the reasonable reader of the article that the reporter is reporting on what happened to two journalists and why they were suspended, and that is all. The article contains no less than three times the word “allegations” as a precursor to the journalists alleged conduct. Nowhere is it stated that those allegations are in fact true or have in fact been proved. On the contrary, it is clearly stated at the end of the article that the plaintiff has not yet been found guilty of any wrongdoing. It is clear from the article that it merely reports that an investigation is currently being conducted into alleged wrongdoings by the two journalists. The article does not intend to convey that such wrongdoings actually occurred. This is so because the reference to bribery is preceded by the words “an allegation of bribery”. So too is the statement that negative articles had been written, preceded by the words “it is said to have taken money from politicians to write negative articles”. Also, as far as the plaintiff is concerned, the statement with reference to a R60 000 bribe taken from a top politician, is preceded by the word that such “allegations” have been made.
- [7] To put it beyond all doubt, the article ends with a clear statement that there are no factual statements of actual wrongdoing on the parts of the two journalists. The only factual statement made is that the two journalists were suspended. In my view, the reasonable reader of the article will simply deduce that it reports on an investigation which is under way regarding the suspension of the two journalists for alleged wrongdoing. He will not infer from the article itself that the journalists are in fact guilty of such wrongdoing. In my view, this conclusion coincides with the principle set out in **Modiri v Minister of Safety and Security** 2011 (6) SA 370 (SCA) at paragraphs 14 and 15. For the

reasons set out above, I am therefore of the view that the article cannot be interpreted as being *per se* defamatory of the plaintiff.

[8] The effect of the above finding in terms of paragraph 2 of the draft order, means that it becomes dispositive of the plaintiff's case and I therefore make the following order:

1. The article is not *per se* defamatory of the plaintiff.
2. The plaintiff is ordered to pay the costs.

DATED THE 17th DAY OF July 2014 AT JOHANNESBURG



C. J. CLAASSEN
JUDGE OF THE HIGH COURT

Appearance for the Plaintiff: Adv Mthimunye
Appearance for the Defendants: Adv C. Bester