



**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG**

(1) REPORTABLE: YES / <u>NO</u>	
(2) OF INTEREST TO OTHER JUDGES: YES / <u>NO</u>	
(3) REVISED	
<u>26/6/2019</u>	<u>[Signature]</u>
DATE	SIGNATURE

CASE NUMBER: 17993/2016

In the matter between

SCOT HUNTER STEWART LAWRENCE

First Plaintiff

BIG POND TRADING LDA

Second Plaintiff

JUDY LAWRENCE

Third Plaintiff

and

HANSRAJ MITHA

First Defendant

NELESH GULAB

Second Defendant

JUDGMENT

DOSIO AJ:

INTRODUCTION

[1] This is an action for damages instituted by the plaintiffs against the first and second defendants for defamation. The second defendant utilised a Facebook page that was in

the name of the first defendant to post various vulgar and scathing statements concerning the plaintiffs.

- [2] The first plaintiff is a business man and the third plaintiff is his wife. The second plaintiff is a company called Big Pond Trading LDA, that conducts a business known as Reef Resort in Xai-Xai in Mozambique.
- [3] Prior to the commencement of the trial, the plaintiffs withdrew their action against the first defendant and only proceeded against the second defendant. The first defendant testified in favour of the plaintiffs.
- [4] The matter was set down for trial on the 13th of May 2019. The notice of set down was served on the second defendant's attorney on the 18th of February 2019. On the preceding Friday, the 10th of May 2019, the second defendant's attorneys filed a notice of withdrawal. On the 13th of May 2019 the second defendant was absent.
- [5] Due to the non-appearance of the second defendant the trial proceeded in terms of the provisions of Uniform Rule 39(1) which provides as follows:

"39(1) If, when a trial is called, the plaintiff appears and the defendant does not appear, the plaintiff may prove his claim insofar as the burden of proof lies by him and judgment shall be given accordingly, insofar as he has discharged such burden. Provided that where the claim is for the debt or liquidated demand no evidence shall be necessary unless the court otherwise orders."

BACKGROUND

- [6] The second plaintiff was involved in a transaction in respect of the property where the second plaintiff conducts its business in Mozambique. The initial transaction between the developer of the property and the second defendant was that the second defendant would purchase five stands for R3.5 million. One stand had a completed house and the other four stands had foundation slabs on them.
- [7] Based on this transaction, the second defendant paid the developer R3.5 million. The developer was unable to perform in terms of the agreement and was sequestered in South Africa. The properties in Mozambique which were part of this development were repossessed by the bank that financed the development.

- [8] According to the first plaintiff the bank intended to sell the properties at an auction sale. It was against the aforementioned background that the plaintiffs became involved in the development. The second plaintiff purchased the properties in the development directly from the bank. This seems to have infuriated the second defendant who had lost an investment of R3.5 million through no fault of the plaintiffs.

EVIDENCE

Evidence of Hansraj Mitha

- [9] Mr Hansraj Mitha, who is the first defendant, testified on behalf of the plaintiffs. He gave evidence of how the second defendant utilised the Facebook profile of the first defendant to publish the defamatory statements. Due to the fact that the first and second defendant were previously co-workers, they shared a laptop computer.
- [10] The first defendant was the administrator of the Facebook page of the business (Greenlands). The first defendant explained that the Facebook page of the business was linked to his personal Facebook page. The first defendant had no password, so his computer was accessible at all times. He testified that he was unaware of the postings of the second defendant and only became aware a month or two later when he and the second defendant were retrenched. This witness testified that he confronted the second defendant after receipt of the summons. The second defendant informed him that he would "*take care of it*". The second defendant did not dispute that he was the author of the postings.

Evidence of Scot Hunter Stewart Lawrence

- [11] The first plaintiff testified that he resides in Xai Xai, Mozambique. He stated that R50 million was invested into the company which is trading as Reef Resort, (namely the second plaintiff). He stated that Facebook is used as a means to advertise Reef Resort as a tourist destination. The Facebook page of Reef Resort was opened in 2012.
- [12] He stated that money is paid to advertise on Facebook and bookings are made via Facebook. People who frequent their restaurant, post comments about their experiences on the Facebook page. Reef Resort is also on Tripadvisor where they enjoy a 4.5 rating. This witness explained that if people like what has been posted, it will also be added to the postings.

- [13] This witness confirmed he did see the 22 defamatory postings made by the second defendant on the Reef Resort Facebook page and proceeded to give evidence in this regard. He stated that the postings referred to him and his wife as “thieves” and “crooks”. He was also personally defamed in that the second defendant made sexual innuendos in respect of the first plaintiff by posting the following comment, namely, *“blow hole where Scott was having sex with the maids”*. The second defendant referred to the Lawrence family as *“the thieving family”* and again referred to the first plaintiff and his wife as *“2 thieving pigs”*.
- [14] This witness stated that he was further personally defamed by the posting *“fat pig Scott Lawrence hope you rot in hell when we see you you will lose your small penis”*. This witness also stated that the second defendant made additional remarks in respect to his wife by posting the comment *“Hey Judy you are getting really ugly after you stole the houses are you not shy”* and *“Jail Judy jail”*.
- [15] This witness referred to the further additional posts on Facebook which are as follows:
- “Yes after you stole our houses”; “Courtney Lawrence you enjoy from the theft while we suffer”; “There are 5 houses you stole”; “When you steal from people you can afford to build a restaurant (sic) no more God issues Judy and Scott must go to jail”; “The thieving family like father like son Mugabe should have cut all your balls off when you next Scott get ready for your teeth to be knocked off and bring your little (sic) boys to protect you”; “Yes Scott you 2 thieving pigs with the Governor you we will make sure you lose everything and get rapped in jails where you belong stealing houses is not like stealing sweets from a baby”; “see your sons are sad knowing what you did”; “Your sons will have to face the people you stole the land and houses from”; “Look at Jills houses you thief Scott”; “Hope your sons know what a thief you are”; “By giving peanuts to children doesn’t cover the staeling (sic) you have done don’t be a wanker Scott face the people”; “Scott and Judy you will need God when you go to hell for stealing houses and the land from Reef estate”; “Scott the thief hunter Lawrence you stole this land and these houses die pig”; “mr arch bishop you are in a resort that has been stolen we have proof ask the Governor”; “Shame priests who stayed in a stolen resort are you not shy Judy you are getting to look like a hag shame Jull was right you will pay for your sins”; and “Archbishop do you know these people stole the land and houses from Judy you will pay for your sins in your sons eyes”.*

- [16] This witness explained that the above-mentioned postings were posted alongside pictures of himself, his wife, his entire family and also when they were photographed alongside Government officials or guests who had visited the resort.
- [17] This witness stated that when the second defendant lost everything, he directed his anger at him, resulting in the opening of both civil and criminal cases in Mozambique. To date the claims have been decided in favour of the plaintiffs. This witness stated that in one of the cases, the Judge expressly told the second defendant that he was going after the wrong people and that he should go against the property developer.
- [18] Apart from the publications on Facebook, this witness stated that there is evidence of other publications made by the second defendant on the social media platform called WhatsApp.

Evidence of Judy Lawrence

- [19] She testified that she is in control of the Facebook page of Reef Resort and she checks it regularly as it is attached to her personal profile. She stated that Facebook is a social media platform used by the second plaintiff to advertise and to create publicity for Reef Resort. She stated that the second plaintiff paid for advertisements and that bookings were also made on the Facebook platform.
- [20] She testified that at the stage when the publications were made, more than 16000 users had "liked" posts of the second plaintiff on its Facebook page. She stated that the defamatory publications would have been accessible to persons who had "liked" the posts of the second plaintiff. These defamatory posts would in addition also be accessible to any person who would be able to access the Facebook page of the second plaintiff.
- [21] In February 2013 she was shocked to see all the derogatory averments made by the second defendant. This witness was extremely traumatised and was emotional while presenting her evidence in court. She stated that since 2011 and 2012 the second defendant has been making terrible claims against her husband. She was told she would be poisoned and she is weary of drinking water at their resort, unless it is from a sealed bottle.

Has Defamation been established?

- [22] In the case of *South African Associated Newspapers Ltd and Another v Yutar* 1969 (2) SA 442 (A), the learned Steyn CJ stated that the test for determining whether a statement is defamatory is well-known: it is whether, in the opinion of the reasonable person, the words have the tendency to undermine, subvert, or impair a person's good name, reputation, or esteem in the community.
- [23] In the case of *Khumalo v Holomisa* 2002 (5) SA 401 (CC), the learned O'Regan J at paragraph [18] stated that the elements of defamation are: Wrongfulness and intentional publication of a defamatory statement concerning the plaintiff. The learned judge stated further at paragraph [18];
- "Once a plaintiff establishes that a defendant has published a defamatory statement concerning the plaintiff, it is presumed that the publication was both unlawful and intentional. A defendant wishing to avoid liability for defamation must then raise a defence which rebuts unlawfulness or intention."
- [24] In the case of *Le Roux and Others v Dey* 2010 (4) SA 10 (SCA), the learned Harms DP stated at paragraph [6] that in determining wrongfulness,
- "...a court has to determine the natural and ordinary meaning of the publication: how would a reasonable person of ordinary intelligence have understood it? The test is objective. In determining its meaning the court must take account not only of what the publication expressly conveys, but also of what it implies, ie what a reasonable person may infer from it."
- [25] In the case of *Le Roux and Others v Dey* (CCT 45/10) [2011] ZACC 4, the learned Brand AJ stated at paragraph [85] that a plaintiff does not have to establish every one of these elements mentioned in the case of *Khumalo v Holomisa* (*supra*); in order to succeed on a defamation claim. He stated that;
- "All the plaintiff has to prove at the outset is the publication of the defamatory matter concerning himself or herself. Once the plaintiff has accomplished this, it is presumed that the statement was both wrongful and intentional."

further at paragraph [91];

“...our courts accept that a statement is defamatory of a plaintiff if it is likely to injure the good esteem in which he or she is held by the reasonable or average person to whom it had been published...Examples of defamatory statements that normally spring to mind are those attributing to the plaintiff that he or she has been guilty of dishonest, immoral or otherwise dishonourable conduct...It also includes statements which are likely to humiliate or belittle the plaintiff; which tend to make him or her look foolish, ridiculous or absurd; and which expose the plaintiff to contempt or ridicule that renders the plaintiff less worthy of respect by his or her peers.”

[26] In respect to the second plaintiff, ever since the decisions of *Dhlomo NO v Natal Newspapers (Pty) Ltd* 1989 (1) SA 945 (A) and the case of *Caxton Ltd v Reeve Forman (Pty) Ltd* 1990 (3) SA 547 (A), were decided, it has been accepted that corporations, both trading and non-trading, have a right to their good name and reputation. Accordingly their reputation is protected by the usual remedies afforded under our law of defamation, including a claim for damages (see *Argus Printing and Publishing Co Ltd v Inkatha Freedom Party* 1992 (3) SA 579 (A), *Financial Mail (Pty) Ltd v Sage Holdings Ltd* 1993 (2) SA 451(A), *Delta Motor Corporation (Pty) Ltd v Van der Merwe* 2004 (6) SA 185 (SCA) and *Treatment Action Campaign v Rath* 2007 (4) SA 563 (C).

[27] Against this background I now turn to the crucial question whether the plaintiffs have been defamed by the statements made by the second defendant.

[28] The plaintiffs rely on 22 publications in the particulars of claim.

[29] The evidence of the first defendant proves that the second defendant was the author of the defamatory statements and that he had a motive to humiliate the plaintiffs by posting these statements on Facebook. It is clear to me that the second defendant intended that by posting these statements on Facebook he would achieve the maximum possible publication of the defamatory statements.

[30] Facebook is a powerful way to communicate to potential customers what your business can provide. It is a platform where potential and existing customers can view the goings-on at the resort, without physically visiting the premises. Facebook is an

international social media platform that can reach many people. Had the postings not been detected and removed, the possibility exists that the second defendant may have continued posting these statements.

- [31] The publications occurred on the Facebook page of the second plaintiff. The publications were clearly aimed at the first and third plaintiff. Each of the 22 statements made by the second defendant are clearly defamatory. It implies that the first and third plaintiffs are guilty of dishonest dealings. In addition the postings imply immoral and dishonourable conduct in respect to the first plaintiff. A reasonable person reading the statements on Facebook would have understood that the first, second and third plaintiffs may be involved in dishonest dealings and that the first plaintiff was immoral and unfaithful to his wife. The second defendant has not apologised for his actions. All he did was to plead a bare denial and raised no defence.
- [32] The tenor of the Facebook posts as a whole can leave the reasonable reader thereof with no other impression than that the posts were intended to discredit first, second and third plaintiffs and to place them in an unfavourable light.
- [33] As stated in the matter of *Khumalo v Holomisa supra*, the Constitutional Court held that the right to dignity enshrined in section 10 of the Constitution encompasses a number of values, these include a person's right to reputation, right to a sense of self-worth and his right to privacy.
- [34] The postings are of such a high personal nature that I am satisfied that they amount to a vicious attack on the character, integrity and moral values of both the first and third plaintiff.
- [35] I accordingly find that the statements made on Facebook would have impaired the plaintiffs reputation as the posts undermine and impair the good name of all three plaintiffs. I am satisfied that the postings are unlawful, intentional and defamatory.

Quantum

- [36] In *The law of South Africa (Lawsa)* volume 14 (2) at paragraph 137 the following is said in respect to damages for defamation:

“137 Damages

The successful plaintiff in a defamation action is entitled to an award of general damages as a *solatium* to compensate the plaintiff for the impingement on his or her dignity and reputation... The court has a wide discretion in determining the award of general damages *ex aequo et bono*, having regard to all the circumstances of the case and the prevailing attitudes of the community... There is no formula for the determination of general damages.”

[37] Factors which a court may take into consideration are:

“(a) The nature of the defamatory statement

Imputations of serious crimes and dishonesty may cause greater hurt to dignity and reputation than implications of private immorality or political unreliability and attract higher awards of damages...

(b) The nature and extent of the publication

A defamatory statement published in a serious journal with a wide circulation may attract a higher award than a publication of an ephemeral nature to a limited number of people...

(c) The reputation, character and conduct of the plaintiff

The plaintiff may adduce evidence of his or her character and reputation and standing in the community..

(d) The motives and conduct of the defendant

The fact that the defendant has embarked on a deliberate and unfounded attempt to destroy the plaintiff's reputation will be an aggravating factor...”¹

[38] In the case of *Dikoko v Mokhatla* 2006 (6) SA 235 (CC) at paragraph [71] the Court set out the factors relevant to the assessment of quantum of general damages in defamation matters as follows:

“When assessing damages for defamation, courts have in the past [considered]...The nature and gravity of the defamatory words; falseness of the statement; malice on the part of the defendant; rank or social status of the parties; the absence or nature of an apology; the nature and extent of the publication and the general conduct of the defendant.” [my emphasis]

¹ LAWSA, volume 14(2) paragraph 37

further at paragraph [75];

“...[although] ...a compensatory award may have a deterrent effect, its purpose is not to punish. Clearly, punishment and deterrence are functions of the criminal law. Not the law of delict.” [my emphasis]

[39] The first plaintiff testified that he resides in two homes. One is 30 kilometres outside Tzaneen, where he resided for 30 years and where he employed 520 people. He stated he had been involved in various upliftment programs both in Tzaneen and in Mozambique. In Mozambique he was involved in the creation of a school. He stated he felt traumatised by the alleged allegations of infidelity on his part in respect to his wife. These allegations clearly traumatised the third plaintiff as well, as both the first and third plaintiff have been together since 1987.

[40] The postings have according to the third plaintiff intruded on their family life and it has affected their four children as well. The third plaintiff stated even though she would want the second defendant to pay their legal costs, this whole action is not only based on money, the main concern is that she wants the second defendant to stop what he is doing. The third plaintiff added that she was born in Tzaneen and that whilst the children were at school they were involved in parenting associations and governing bodies. She confirmed that they have been involved in numerous fund raising initiatives. It is clear from her evidence that they are well known in both Tzaneen and Mozambique.

[41] In respect to the second plaintiff, the first plaintiff stated that although he does not think the allegations of the second defendant has had an impact financially on the business, they still needed to hide all the statements made by the second defendant on their Facebook pages. The third plaintiff stated that it is unclear how many people actually saw the posting before they were removed. As a result she was unsure what impact the postings had had on the business.

[42] In the matter of *Lady Agasim-Pereira v Johnnic Publishing Eastern Cape (Pty) Ltd and others* [2003] 2 All SA 416 (SE) the plaintiff sued the defendants for defamation based on an article which was published in *The Herald*, (a daily newspaper owned by the first defendant). The court awarded her R50 000-00.

- [43] In the matter of *Independent Newspapers Holdings Ltd & others v Suliman* [2004] JOL 12740 (SCA), the plaintiff (Mr Suliman) claimed R1 000 000-00 from Independent Newspaper Holdings, in respect to damages arising out of a defaming article which appeared in the *Cape Times*. The article had a picture of the plaintiff and it stated that the plaintiff was a suspect in a Cape Town bombing. The learned Selikowitz J held that a reasonable reader would have concluded that the plaintiff was arrested as a suspect in the Planet Hollywood bombing and awarded the plaintiff R90 000-00 in damages for defamation. On appeal, the Supreme Court set this award aside and awarded the plaintiff R50 000-00.
- [44] In the case of *Naylor and Another v Jansen; Jansen v Naylor and Others* 2006 (3) SA 546 (SCA) [2005] 4 All SA 26, the court awarded the plaintiff R30 000-00 in damages. It was alleged he had stolen money from his employer. The facts showed he had not stolen money but had made himself guilty of misconduct involving dishonesty. On appeal the award was reduced to R15 000-00.
- [45] In the matter of *Dikoko v Mokhatla (supra)*, the plaintiff who was an executive mayor of the Southern District Municipality was awarded R110 000-00 for defamation as the defendant had deliberately acted to falsely implicate the plaintiff in greater debt than was in fact the case.
- [46] In the case of *NM and Others v Smith and Others* (Freedom of Expression Institute as Amicus Curiae) 2007 (5) SA 250 (CC), the court held that the respondents by publicising in a book the names and positive HIV status of the three applicants, caused a serious violation of their rights to dignity and psychological integrity. The Constitutional Court awarded each Applicant R35 000-00 in damages.
- [47] In the case of *Mogale and Others v Seima* 2008 (5) SA 637 (SCA), an article in a newspaper gossip column reported that the plaintiff had given his television presenter girlfriend a 'hot klap' through the face after catching her eyeing another man at a wedding reception. The defendant tendered a published apology. The award of R70 000-00 was reduced on appeal to R12 000-00.
- [48] In the matter of *Mkhize v Media 24 Ltd* [2008] 4 All SA 267 (N) the plaintiff who was a senior ANC leader in KwaZulu-Natal was allegedly implicated falsely in that it was

alleged Mkhize had paid money for the assassination of UDM strongman Sifiso Nkabinde. The plaintiff was paid R150 000-00 in damages.

- [49] In the matter of *Tsedu and another v Lekota* 2009 (4) SA 372 (SCA), the plaintiffs who were prominent officer bearers of the African National Congress, brought an action against the *City Press* newspaper after they carried an article under the heading 'ANC top brass spied on one another-apartheid agent'. The plaintiffs were awarded R150 000-00 and R112 500-00 respectively. On appeal both amounts were reduced to R100 000-00.

- [50] In the case of *Isparta v Richter and Another* 2013 (6) SA 529 (GNP) an award of R40 000-00 was made based on a comment that was posted on Facebook.

- [51] In the case of *Media 24 Limited v Du Plessis* [2017] ZASCA 33 an award of R80 000-00 was decreased to R40 000-00.

- [52] In the matter of *Manyi v Dhlamini* [2018] ZAGPPHC case number 36077/13, dated the 18th of July 2018, the learned Mavundla J granted an award of R50 000-00 for defamation against a defendant who made defamatory statements on a WhatsApp group. The statements were widely circulated on numerous other WhatsApp groups and distributed on various media platforms. The statement was intended by the defendant to mean that the plaintiff was dishonest in the following respects, namely, that the plaintiff was cheating on his wife, that he was sleeping around with students, that he used money to induce students in order to sleep with them and that he was a person of low morals, further that he was a lazy animal and sexually abused and unduly influenced girls with money.

- [53] No two cases are likely to be identical or sufficiently similar so that the award in one can be used as an accurate yardstick in the other. The award in each case must depend upon the facts of the case seen against the prevailing attitudes in the community.

- [54] The first and third plaintiffs have been residing in the Tzaneen area where they have conducted farming businesses (eucalyptus tree farming and avocado farming) for the last 30 years. Although they currently reside mostly at the business of the second

plaintiff in Xai-Xai, it is clear to me that the first plaintiff and the third plaintiff enjoy an extremely good standing in the community.

- [55] Although no witnesses were called to support the first or third plaintiff's evidence that their reputation has been impaired in either Tzaneen or Mozambique, I am satisfied that from the evidence of both the first and third plaintiff that these postings have affected them immensely. Even if I am wrong in this regard, the learned Brand JA in the matter of *Media 24 v SA Taxi Securitisation* [2011] ZASCA 117 at paragraph [38] stated that "A natural person is not required to show sentimental loss. He or she will receive damages for defamation even in the absence of injured feelings."
- [56] I have no doubt that a monetary award should be made to the first and third plaintiffs, the only question remaining is what the quantum should be.
- [57] In respect to the second plaintiff, as stated at paragraph [41] (*supra*), the first and third plaintiff's themselves doubt whether the postings had any impact on the business of the second plaintiff. Although there is no conclusive proof of patrimonial loss, it does not eliminate the damage to the business reputation of the second plaintiff. As stated by the learned Rabie ACJ in the case of *Dhlomo v Natal Newspapers (Pty) Ltd (supra)* at paragraph [22] "It would be wrong, I think, to demand of a corporation which claims for an injury done to its reputation that it should provide proof of actual loss suffered by it, when no such proof is required of a natural person who sues for an injury done to his reputation"
- [58] The postings were made on a Facebook page which has 16000 users. Due to the prominence that this Facebook page receives and due to the persistent posts that were made, it is clear that some people may have seen these posts before they were removed. The actual amount of people who saw the postings is unknown.
- [59] It is clear that none of these 16000 users alerted the first or third plaintiff that such postings were on the second plaintiff's Facebook page. The evidence presented suggests that the third plaintiff noticed the postings herself and removed them prior to anyone notifying her.
- [60] In the matter of *Media 24 v SA Taxi Securitisation (supra)*, the learned Brand JA stated at paragraph [44] "It is simply not true that injury to reputation of a trading company will

always be measurable in terms of lost profits...-the court is obliged to base its award on what has been described as no more than 'an informed guess'".

Further at paragraph [52] the learned judge states "There is no formula for the determination of general damages. It flows from the infinite number of varying factors that may come into play. So, ie. The court will have regard to the character of the corporations' business, the significance of its reputation, the seriousness of the allegations, the likely impact of those allegations on the corporations' reputation, and so forth. But, as was pointed out by Corbett CJ in *Caxton supra*, the court will also have regard to the fact that the company has no feelings that can be consoled".

- [61] There is no evidence placed before this court as to what the consequences of the injury to the reputation of the second plaintiff was. In the absence of such evidence, I find that the award to be granted to the second plaintiff should be substantially lower than that awarded to the first and third plaintiffs.

- [62] The initial request of R500 000-00 in respect to the first, second and third plaintiffs respectively, is much higher than awards made in the cases referred to *supra*.

- [63] I am aware that in making comparisons with past awards, allowance must be made for the erosive effect of inflation, nevertheless, the amounts claimed are too high.

- [64] The first and third plaintiff, although they are well-known in both Tzaneen and Mozambique, do not hold the same position as an executive mayor in the case of *Dikoko v Mokhatla (supra)*, nor are they senior leaders in a political party like in the matters of *Mkhize v Media 24 Ltd (supra)* and *Tsedu v Lekota (supra)*.

- [65] The remarks made by the second defendant imputes dishonesty to the first and third plaintiffs which this court cannot ignore. However, it is important to note that these statements were not made on the front page of a very prominent newspaper where it would have been read by everyone that bought the newspaper.

- [66] The facts of the case *in casu* are similar to the circumstances that occurred in the matter of *Manyi v Dhlamini (supra)* where statements pertaining to the plaintiff's infidelity and dishonesty were circulated on numerous WhatsApp groups. The facts are also to a certain extent similar to the unwarranted remarks of criminal activity, made in

respect to the plaintiff in the case of *Independent Newspapers Holdings Ltd & others v Suliman*.

[67] Taking into account the facts *in casu* and the authorities cited above, I am of the view that that an award of R50 000-00 (fifty thousand rand) each, in respect to the first and third plaintiffs would be fair and reasonable.

[68] Unlike the first and third plaintiff, the second plaintiff does not need a *solatium* for wounded feelings. In light thereof I am of the view that an award of R25 000-00 (twenty five thousand rand) would be a fair and reasonable award for defamation in respect to the second plaintiff.

COSTS

[69] The plaintiff's counsel requested me to order costs on a punitive scale against the second defendant as he used the first defendant's Facebook page to post the vulgar statements. In addition the posting were on-going and the second defendant's lawyer withdrew the Friday prior to the matter proceeding to trial.

[70] In general a court does not grant attorney and client costs unless there are special grounds. In addition, where a court is considering making a punitive costs order against a party, that party should be informed and afforded an opportunity to be heard on the issue. In this instance the second defendant did not appear in court.

[71] Apart from the second defendant's lawyer withdrawing on the Friday preceding the trial, there is no other evidence placed before me to illustrate that the second defendant's conduct during the litigation was reckless, malicious or frivolous. Accordingly such a request for punitive costs is denied.

[72] The plaintiff's counsel requested that costs should be awarded against the second defendant on the High Court scale. The claims of all three plaintiffs were highly inflated in order to bring the matter within the jurisdiction of this Court. The actual total award granted falls within the jurisdiction of the Magistrate Court and accordingly I am not inclined to award costs on the High Court scale.

ORDER

[73] In the result, the following order is made;

1. The second defendant is ordered to pay R50 000-00 (Fifty thousand rand) in respect of the first plaintiff; together with interest on this amount at the rate of 10.25% per annum from the date of judgment to date of final payment. The second defendant is ordered to pay the costs of the first plaintiff on the Magistrate Court scale;
2. The second defendant is ordered to pay R25 000-00 (Twenty five thousand rand) in respect of the second plaintiff; together with interest on this amount at the rate of 10.25% per annum from date of judgment to date of final payment. The second defendant is ordered to pay the costs of the second plaintiff on the Magistrate Court scale.
3. The second defendant is ordered to pay R50 0000-00 (Fifty thousand rand) in respect of the third plaintiff, together with interest on this amount at the rate of 10.25% per annum from date of judgment to date of final payment. The second defendant is ordered to pay the costs of the third plaintiff on the Magistrate Court scale;



D DOSIO

ACTING JUDGE OF THE HIGH COURT

Appearances:

**On behalf of the Plaintiffs
Instructed by:**

**Adv. A.P.J Els
Thomas and Swanepoel Attorneys**

**Heard on 13th May 2019
Judgment handed down on 26th June 2019**