REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG LOCAL DIVISION, JOHANNESBURG

CASE NO: 28924/2019

(1) REPORTABLE: ~~YES~~ / NO
(2) OF INTEREST TO OTHER JUDGES: ~~YES~~/NO
(3) REVISED.

03/12/19 .....

Date **ML TWALA**

In the matter between:

JOHAN FRANCOIS ENGELBRECHT	**FIRST PLAINTIFF**
ICON INSOLVENCY PRACTIONTIONERS (PTY) LTD	**SECOND PLAINTIFF**
AND	
INDEPENDENT MEDIA (PTY) LTD	**FIRST DEFENDANT**
LUYOLO MKENTANE	**SECOND DEFENDANT**

JUDGMENT

TWALA J

[1] Before this Court, is an application for default judgment which served before the Registrar of this Court but was refused and referred to open Court since both the plaintiffs seek an order for payment of an unliquidated sum of money (general damages) in the tune of R5m. This application is against the first defendant only since the plaintiffs could not secure service of the summons upon the second defendant.

[2] The genesis of the matter is that both the plaintiffs are insolvency practitioners ploughing their trade within the jurisdictional area of this Court. The defendants published certain defamatory articles about both the plaintiffs in a certain newspaper and internet sites which are widely distributed between the Council of the Bar, the Judiciary and the side bar. The defendants alleged in the articles that the plaintiffs are corrupt, fraudulent and intimidate its opponents. The defendants have failed to retract and remove these articles from the respective internet sites on numerous requests from the plaintiffs.

[3] On the 27th of August 2019 summons were served on the first defendant by the Sheriff and to date the first defendant has not filed its notice of intention to defend the action. What remains for determination by this Court is the interdictory relief and the amount of damages to be awarded to the plaintiffs in relation to the injury they suffered to their integrity and good names as a result of the aforesaid publications.

[4] It is a trite principle of our law that for the applicant to succeed in obtaining an interdictory relief, it must show that it has a clear right, a reasonable apprehension of harm to the right and that there is no other remedy available.

[5] In this case the plaintiffs have established and are entitled to protect their good name and dignity they alleged has been infringed. The infringement of their reputation and good name by the publication has caused them and continues to cause them harm both in its personal and professional capacity through the wide spread dissemination of the impugned statements. The plaintiffs has no alternative remedy to the continuing injury since the defendants have failed to remove the defamatory statements from the internet sites nor published retraction of the said publications. The plaintiffs are therefore entitled to the interdictory relief they seek against the defendants.

[6] In *Le Roux and Others v Dey (CCT45/10) [2011] ZACC* the Constitutional Court stated the following:

> *"where the plaintiff is content to rely on the proposition that the published statement is defamatory per se, a two-stage enquiry is brought to bear. The first is to establish the ordinary meaning of the statement. The second is whether that meaning is defamatory. In establishing the ordinary meaning, the court is not concerned with the meaning which the maker of the statement intended to convey, nor is it concerned with the meaning given to it by the persons to whom it was published, whether or not they believed it to be true, or whether or not they then thought less of the plaintiff. The test to be applied is an objective one. In accordance with this objective test the criterion is what meaning the reasonable reader of ordinary intelligence would attribute to the statement. In applying this test, it is accepted that the reasonable*

reader would understand the statement in its context and that he or she would have had regard not only to what is expressly stated but also to what is implied."

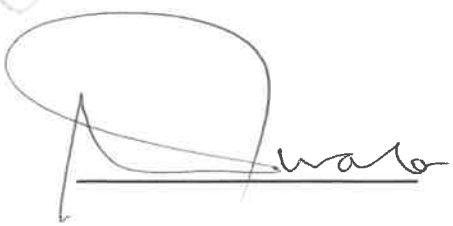
[7] It is my firm view that the statements published by the defendants in the newspaper and internet sites meet the requirements as set out in the case of Le Roux referred to above. To a person of reasonable intelligence, which is a person who is involved in the insolvency industry and the legal fraternity, meant the plaintiffs are fraudulent and corrupt in their dealings with the Master with regard to the insolvent estates. These statements damage the integrity, dignity and good name of the plaintiffs. The statements were egregious, in bad taste and malicious. I find these statements to be wrongful and unlawful.

[8] In considering the amount of damages to be awarded in a case for defamation, the Court has to take into account that essentially the plaintiff seeks the vindication of its reputation by claiming compensation from the defendant and as a conciliation of the wrong done to him. The aggravating factor is the conduct of the defendant and the manner in which the defamatory statements were made and its attitude to retract such statements.

[9] In casu, the defendants were requested to retract these statements and remove them from the relevant internet sites but failed and or refused to do so. The statements are still on the sites and continue to hurt the plaintiffs in their personal and professional capacity. I am mindful that the business of the first plaintiff is intertwined and inseparable with the second plaintiff. The damaged caused to the good name of the first applicant is by association and extension the damage to the good name of the second plaintiff. The ineluctable conclusion therefore is that the award of damages to both plaintiffs will be unreasonable, unfair and not in accordance with course of justice.

[10] In the result, I make the following order:

1. The statements published on the 8th and 15th of April 2019 by the first defendant titled "Net closes on group of rogue liquidators" and "Pamodzi returns to haunt Master's Office" respectively are defamatory and false;
2. It is declared that the publication of the statements by the first defendant was, and continues to be unlawful;
3. The first defendant is ordered to remove the statements from all the internet sites wherein it appears within 48 hours from the granting of this order;
4. The first defendant is ordered to pay damages to the plaintiffs in the sum of R300 000;
5. Interest on the said sum of R300 000 at the rate of 10.5% per annum from the date of summons to date of final payment;
6. The first defendant is to pay the costs of the action on the scale as between attorney and client.



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JUDGE OF THE HIGH COURT OF SOUTH AFRICA

GAUTENG LOCAL DIVISION

Date of hearing:	**25th November 2019**
Date of Judgment:	**3rd December 2019**
For the Plaintiffs:	**Adv C Woodrow**
Instructed by:	**Rabbie Botha & Associates Inc** **Tel: 087 096 0198**
For the Defendant:	**DEFAULT**