

**IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)**

CASE NUMBER: 20254/2012

13/6/14


IN the matter between:

HERMINA ELIZABETH JANSEN VAN VUUREN

And

AUDREY SULLIVAN

DEFENDANT

DELETE WHICHEVER IS NOT APPLICABLE	
(1) REPORTABLE: YES/NO.	
(2) OF INTEREST TO OTHER JUDGES: YES/NO.	
(3) REVISED.	
13/6/2014 DATE	 SIGNATURE

JUDGMENT

TLHAPI J

[1] The plaintiff's action is based on the *actio iniuriarum*. She issued summons against the defendant and claimed damages in the amount of R400 000.00.

In the particulars of claims she alleged:

"

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Gedurende die tydperk 2011 tot 2012 het die verweerderes onregmatig en opsetlik verskeie skrywes aan die eiseres gerig waarvan die inhoud lasterlik was met die volgende strekking:

- 3.1 Dat die eiseres 'n "common girl" van Pretoria-Noord is wat ander vrouens se mans steel soos blyk uit Aanhansel "JV1".....
- 3.2 Dat die Eiseres pretensieus is en verhoudings met getroude mans aan knoop soos blyk uit Aanhansel "JV2"
- 3.3 Dat die Eiseres 'n verhouding met haar baas aangeknoop het om sy geld se onthalwe soos blyk uit Aanhansel "JV3".....
- 3.4 Dat die Eiseres 'n onaaggename persoonlikheid het waaraan geen chirurgie iets kan doen nie soos blyk uit Aanhansel "JV4"

4

Die voormelde bewerings is by wyse van faks na die Eiseres se werk, waartoe verskeie ander werknemers toegang het, gestuur, sowel as per pos soos blyk uit Aanhansels "JV5" en "JV6", synde koeverte waarmee die mededelings aan die Eiseres versend is."

[2] The plaintiff testified that she had over a period received mail via post and facsimile which were sent to her employers address and these letters consisted of injurious content. She did not know the individual who sent the letters and did not know the reasons or the purpose for which they were sent. She averred that 'JV1', 'JV2', 'JV3 and 'JV4' bore some similarities even though some were written in the format of a poem. 'JV6' consisted of three envelopes addressed to the plaintiff and these were in different hand writings. On 9 March 2012 she received 'JV2' by facsimile. She immediately called the number from which the document had been faxed and it had been sent from a Kodak outlet in Wonderboom.

[3] The plaintiff drove to the complex which was about 10 kilometres from her place of employment. She was informed that no video footage was available for her to view. Fifi a black employee at Kodak left to look around for the sender of the fax

and located her at Woolworths after which went to the said store to have a glimpse of the woman and a description of the clothing the woman was wearing was given. The plaintiff testified that she recognized the woman as the one who was living with her ex-husband. She did not confront the plaintiff. The plaintiff testified the defendant sent the letter to her out of jealousy of her and that the defendant had always interrogated her children about her.

Marienne van Rhyn confirmed that the fax was sent from her employment and she gave a description of the clothes the person was wearing and that she had sent out Fifi to look for the lady in the shopping complex around Woolworths. Further that the defendant was the lady who came into the store to send the fax.

[4] About six days later the plaintiff drafted a statement and obtained the defendant's photo from a photograph of the defendant and her children which was on a computer and caused it to be copied onto statement, together with the tax invoice which was paid for the fax. The statement was signed by two employees at Kodak, Marienne van Rhyn ('Ms van Rhyn) and Caroline Houmann. Fifi did not sign. The statement read:

"Hiermee verklaar ons (Mariene van Rhyn).....en (Caroline Houmanndat die dame op die foto wel die dame was wat die faks gestuur het of die 9de Maart.....die faks was on en by 10:50 gestuur die oggend. Die dame het 'pink en wit toppie gehaai met 'n lig pink rompie"

The plaintiff testified that there were about 40 employees at her place of employment and that she been in a relationship for two years with her employer, who was married at the time. The letters were in sealed in envelopes and posted to her

and she had shown the letters to two of her colleagues. The faxes came through her personal computer at IT and she was not certain if they were seen by her colleagues because some of the employees had access to her computer. The letters and poems had similarities which referred to her extra marital relationship; her physical attributes being her nose and breasts and, referred to her as a common girl and other descriptions. The letter faxed from Kodak on the 9 March 2012 had common features to those that preceded it. In cross examination she revealed that she had employed the services of an expert regarding the hand writing on the envelopes and he could not link them to the defendant. The report by the expert was not discovered. The letters and faxes had humiliated her and caused her to withdraw from her colleagues and socially.

[5] The defendant confirmed her relationship with the plaintiff's ex-husband and that the relationship commenced four years after the divorce with plaintiff. She had been introduced to the plaintiff and plaintiff had not been responsive. She denied being at Wonderboom Junction Complex on 9 March 2012. On that day she participated in an a 10km SANDF Fun Race at ThabaTshwane. The event started at 9h00 and the prize giving ceremony was at 11h00. She later left for a 12h00 spa appointment. The defendant did not have a cordial relationship with the plaintiff. There had been a disagreement long after summons had been issued and she had sent an 'sms' to the plaintiff, prompted by financial demands made by plaintiff on her ex-husband. The defendant testified that she contributed 50% towards household expenditure and was entitled to complain.

Mr Janse van Vuuren testified that he and the defendant enjoyed a good relationship with his children. The plaintiff had displayed antagonism towards the defendant and his other former girlfriends. The plaintiff had told him to inform the

defendant to stop sending her letters and he had gone to Kodak to check for himself to try and ascertain for himself.

[6] On the authorities cited on behalf of the plaintiff it was trite that the *actio iniuriarum* protected the dignity of the individual from impairment by others. In *Ryan v Petrus* 2010 (1) SA 169 (ECG) at paragraph [11] Pickering J stated the definition of dignity by 'Melius de Villiers in 1899 in his well known work *The Roman and Roman Dutch Law of Injuries* at 24 as:

"that valued and serene condition in his social or individual life which is violated when he is publicly or privately, subjected by another to offensive and degrading treatment, or when he is exposed to ill-will, ridicule, disesteem or contempt."

Further on at 24 and 25 the following is stated:

"Every person has an inborn right to the tranquil enjoyment of his peace of mind, secure against aggression upon his person, against the impairment of that character for moral and social worth to which he may rightly lay claim and of that respect and esteem of his fellow men of which he is deserving, and against degrading and humiliating treatment; and there is a corresponding obligation incumbent on all others to refrain from assailing that to which he has such right."

In the *Ryan* matter *supra*, it was reiterated that even vilest of individuals were entitled to dignity, so whether the plaintiff's physical features did not enhance her in the view of others, whether she was a common girl or had been living in an adulterous relationship with her employer, she remained deserving of dignity in her own right. Any impairment on these grounds were unlawful.

[7] Before dealing with the issue of liability it is important to establish whether the plaintiff has established on a balance of probabilities that the defendant was responsible for the utterances in the letters and poems and whether she was the individual identified by the plaintiff and Ms van Rhyn . It was argued for the plaintiff that Ms van Rhyn had positively identified the defendant as the lady who came to the Kodak store to fax.

The plaintiff's proof to a large degree relies on the alleged identification of the defendant at the Wonderboom Junction Complex on 9 March 2012 as proof that the defendant was the author of the letters and poems. In my view Ms van Rhyn's statement under 'JV5' cannot be relied upon as establishing on a balance of probabilities, the identity of the lady who faxed the document on 9 March 2012. The video was not in working order, so the only other confirmation was for her to have made an observation at Woolworths. She does not rely on her own observation of defendant after the arrival of the plaintiff at the store and she does not give any basis why she is sure of the identity of the defendant. There is always the possibility of the coincidence of the presence of someone at the shopping complex wearing pink attire. No physical features are relied upon, she also did not know the person. She testified that she recommended to Fifi to go looking around the complex and suggested Woolworths. She does not explain why she suggested this store in particular. She does not say if she personally saw the woman entering the said store, or that after Fifi had seen the woman, she accompanied the plaintiff to where Fifi was. Fifi was not called as a witness.

I am mindful of the fact that if reliance is had also to the identity of the defendant from the photograph on the statement, the plaintiff was the author of such

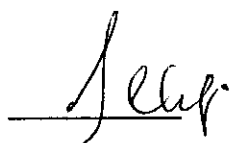
document. There is no evidence by Ms van Ryn why in particular the photograph could have resembled the woman in pink at Woolworths. I am therefore not satisfied that Ms van Rhyn positively identified the woman who faxed the document as the defendant.

I am further not satisfied that the plaintiff has proved on a balance of probabilities that the woman in the pink attire was the defendant, especially in the absence of corroboration from Fifi. Having regard to the relationship between the plaintiff and defendant one would have expected the plaintiff to have confronted the defendant in the presence of Fifi and for Fifi to have made the defendant aware, even though no conversation about the event at the store was engaged .

[8] What now remains is whether the plaintiff has proved on a balance of probabilities that the defendant was the author of the letters and the envelopes. There is no proof that the defendant was the author and no basis was given as to why the defendant in particular could be the author. The plaintiff and defendant have known each other for a considerable time and it was apparent from their testimony that their relationship was not a cordial one. However, on a clear reading of the letters and poems holistically, the probabilities are varied and these could have emanated from so many other sources, her employer's wife, or those sympathetic to her situation, or her co-employees. The defendant does admit to having sent an 'sms' to the plaintiff but that this had only been after the summons had been issued and that it related to what the defendant believed to have been unreasonable financial demands by the plaintiff on her ex-husband. I am not satisfied that the plaintiff has discharged her onus.

[9] In the result the following order is given:

1. The plaintiff's claim is dismissed with costs.



TLHAPI V.V

(JUDGE OF THE HIGH COURT)

MATTER HEARD ON	:	12 NOVEMBER 2013
JUDGMENT RESERVED ON	:	13 NOVEMBER 2013
ATTORNEYS FOR THE PLAINTIFF	:	VAN HEERDEN & KRUGEL
ATTORNEYS FOR THE DEFENDANT	:	STEVE BESTER ATT