

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

CASE NO: 33251/2017

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

E. M. Moepe 19/9/2019

In the matter between:

ANDREW (AUBREY) MOEPI

PLAINTIFF

and

MOSES RATLHAGANE

DEFENDANT

JUDGMENT

KUBUSHI J

INTRODUCTION

[1] This is a claim for defamation based on the contents of a document authored and submitted by the defendant to the Management of the Jubilee Hospital where both the plaintiff and the defendant were employed at the time.

[2] A copy of the document in question was attached to the particulars of claim as annexure "AM1" and read as follows:

"SUBJECT: MISCONDUCT INCIDENT I.R.O ARTISAN CARPENTER/FMU MANAGER AUBREY MOEPI AND ASSOCIATES

1. PURPOSE

To report cases of misconduct against the above mentioned artisan carpenter/ F.M.U manager who unlawfully and unprocedurally removed state property unauthorised, using state vehicle and state paid employees to load. His intention was to unduly and unlawfully benefit them.

2. BACKGROUND

The state properties that were moved from hospital premises were maintenance equipment/ machinery including two standby generators. They were moved to a house in Tembisa Township before they are distributed. For some reasons he panicked and brought some of the property back to the hospital.

- How these big items were moved out of the hospital and without proper authorization and items can just willy nilly come back through the security that is thought to be highly professional and accountable, leaves much to be desired. Petrol storeroom was broken into by artisan carpenter/ F.M.U manager Aubrey Moepe and took petrol to the value of R600.00.

Maintenance personnel under his control protested and brought the incident to the attention of management but instead they were intimidated by management and threatened with law suits. No action was taken against Aubrey Moepe.

- There was a petrol scam involved at Ga-Rankuwa petrol depot. Carpenter artisan/ F M U manager Aubrey Moepi was involved. This was stopped by procurement officer Mr M Rakau – no action was taken to reprimand. Why?
- There was/ is a case reported through presidential hot line and there is a reference number to that. That case was never attended to even when reported.

3. RECOMMENDATION

By virtue of Aubrey Moepi being the manager is aware of the regulations and policies of the Department. With this knowledge and failure to comply and uphold the regulations and policies. The Department view misconduct of such nature very seriously and they could lead to disciplinary action being instituted against them.

4. CONCLUSION

I/We hope and trust Jubilee management will act upon this report the same as you 'management' acted upon Aubrey Moepi's reports when he reported others e.g. M.F. Pule and M. Ratihagane who were suspended, investigated and put through disciplinary hearings. Management by law will have to open a case of theft and racketeering with SAPS. SAPS after their investigations will hand the case to relevant chapter 9 institutions for further proceedings

- Crime watch, hawks, NPA and so on."

The letter was addressed to ten members of the Jubilee Hospital Management ("the management"). It was signed by M Ratihagane, the defendant in this matter.

[3] It was not in dispute that the document was authored and submitted to the management by the defendant – this was admitted in the defendant's plea. What according to the plaintiff remained to be determined was whether the contents of the document were defamatory and, as such, offended the plaintiff. The defendant in his plea denied that the contents of the document were defamatory and in the *alternative* pleaded several defences of justification like privilege, unlawfulness, truthfulness,

lack of *animus injuriandi* and that the submission of the document was to the benefit of the public.

[4] The matter proceeded on both merits and *quantum*. The parties were agreed that the burden of proof was on the plaintiff to prove the defamation, whilst the *onus* to prove the defences of justification raised by the defendant was upon the defendant.

[5] Two witnesses gave evidence in support of the plaintiff's case, namely the plaintiff and one Mr Sello Charles Sebola ("Mr Sebola").

[6] The defendant closed his case without leading any evidence. Thus, at the end of the trial, the matter stood to be decided on the unchallenged evidence of the plaintiff. The defendant in his closing argument applied for absolution from the instance. As a result, the issue that stood to be determined at the end of the trial was whether the defendant was entitled to the absolution from the instance.

THE EVIDENCE

The Evidence of Maubane Andrew Moepi (the plaintiff):

[7] At the beginning of his evidence, the plaintiff sought an amendment of his name which was stated in the papers as Aubrey when in fact he was Andrew. Since the amendment was not opposed it was granted.

[8] The evidence is that, at the time of this incident, the plaintiff was employed by the Department of Health at Jubilee Hospital. He is an artisan by profession but was employed as a maintenance foreman in a management position. His duties were supervisory in nature and involved the general maintenance of the hospital.

[9] The plaintiff knew the defendant very well. The defendant was once his colleague as they were, at all material times hereto, both employed by the Department of Health at Jubilee Hospital. The defendant was first employed as a driver but was later transferred to the Out-Patients' Department as a clerk in the administration section.

[10] The two were at one time very close friends and assisted each other with their respective problems. They were also close family friends. At some time during their employment at Jubilee Hospital, they were shop stewards and this is how they came to know each other. At one time, the plaintiff, as a shop steward, represented the defendant when he was charged by the hospital for theft. The defendant was as a result of those charges convicted and suspended for three (3) months. The plaintiff stopped being a shop steward when he was appointed in the managerial position and that was the beginning of their problems.

[11] Further testimony tendered is that the defendant held a grudge against the plaintiff which emanated when the plaintiff became part of management. The defendant is said to have telephoned the plaintiff and asked him not to take instructions from the Chief Operating Officer ("the CEO"). This, according to the plaintiff, was due to the fact that after the theft conviction the defendant developed a negative attitude towards the management and in particular the CEO. When the plaintiff failed to heed the defendant's request, their friendship went sour and the defendant stopped talking to the plaintiff.

[12] The plaintiff's evidence was to the effect that he was informed of annexure "AM1" by Ms Magano Damaria (Ms Magano) who was his supervisor. The plaintiff denied all the allegations contained in the said document. He testified that, as a

result of the document, a certain Mr Khoza was appointed to investigate the allegations proffered against him by the defendant in the document. The said Mr Khoza interviewed him and also interviewed other witnesses. The plaintiff was later informed that Mr Khoza found no valid complaint against him. The final report of Mr Khoza was discovered by the plaintiff and formed part of the record of proceedings.

[13] The plaintiff claimed damages in a global amount of R450 000 and left it in the discretion of the court to determine a fair and reasonable award. He testified that at the time of the incident in question, he was fifty (50) years of age married with four (4) children; he was a board member of a pre-school; was affiliated to the Holy Jerusalem Church of Repentance of South Africa – he became a priest/pastor in the church a year after the incident in issue. He had been working at Jubilee Hospital for almost 28 years and had been three (3) years in the managerial position when the incident occurred. He had never been investigated before. At the time of giving evidence he was no longer working at Jubilee Hospital but had found alternative employment with the Department of Infrastructure Development in Johannesburg.

[14] Most of the plaintiff's evidence revolved around the commission of the offences alleged in annexure "AM1", which evidence to me, was immaterial and irrelevant because the said allegations were already investigated and dismissed in the investigation by Mr Khoza. There was no need to revisit and/or investigate the allegations afresh.

The Evidence of Sello Charles Sebola (Mr Sebola):

[15] Mr Sebola, like the parties herein, was at the time of the incident in the employ of the Department of Health at Jubilee Hospital in the maintenance unit. His

immediate supervisor was the plaintiff to whom he reported. At the time of giving evidence he was no longer in the employ of the Department of Health having gone on pension six (6) years ago.

[16] Like the plaintiff's evidence, I found the evidence tendered by Mr Sebola irrelevant and of no material assistance to the issues that required to be decided. The evidence centred on the commission of the offences that were contained in annexure "AM1", as well. This evidence, as I have already indicated, was not necessary as testified by the plaintiff that the allegations were already investigated and dismissed in the investigation by Mr Khoza.

I turn now to deal with the application for absolution from the instance.

ABSOLUTION FROM THE INSTANCE

[17] In an application for absolution at the end of the plaintiff's case the court must consider whether there is evidence upon which it can find for the plaintiff. The reasoning is different from that applicable when the court comes to consider absolution after having heard the evidence of the plaintiff and the evidence, if any, of the defendant, whether to grant absolution at the close of the defendant's case. The enquiry then is: 'Is there evidence upon which the court ought to give judgment in favour of the plaintiff?'¹

[18] The starting point should be the understanding of defamation as a delict. Defamation is defined as the intentional infringement of another person's right to her/his good name. Put differently, defamation is the wrongful, intentional publication of words or behaviour concerning another person which has the effect of injuring

¹ See Herbstein & Van Winsen: The Civil Practice of the High Courts of South Africa Sed Vol 1 at 921.

her/his status, good name or reputation.² The requirements to prove defamation are:³ (a) the wrongful, (b) intentional, (c) publication, (d) of a defamatory statement (e) concerning the plaintiff.

[19] The defendant applied for absolution from the instance on the basis that the plaintiff failed to prove one of the elements of defamation, namely, publication. In the *alternative* he relied on the fact that the plaintiff conceded the defendant's defence of privilege in his (the plaintiff's) oral evidence.

[20] I, hereunder, deal first with the element of publication.

Failure to Prove Publication

[21] Publication means the communication or making known of the defamatory matter to at least one person other than the person defamed. Normally the plaintiff must establish that the defamatory statement was in fact communicated to a third person who understood the meaning thereof.⁴

[22] The authors *Neethling Pretorius Visser*⁵ state the following in regard to publication:

"Since the good name, respect or status which a person enjoys in society relates to the opinion of others concerning him, and defamation consists in the infringement of his good name, it is self-evident that defamation will arise only if the defamatory statement or behaviour has been published or disclosed to a third person. Without such publication the opinion of others as regards the person involved cannot be lowered. Thus, publication is a necessary requirement for defamation.

² See *Neethling Pretorius Visser: Law of Delict* (1993) at 319

³ *Khumalo & Others v Holomisa* 2002 (5) SA 401 at 413G par [17].

⁴ *Wille's Principles of South African Law* 9ed at 1169.

⁵ *Law of Delict* 7ed at 352-353.

In general this requirement is satisfied if the words or conduct are made known or disclosed to at least one person other than the plaintiff himself."

[23] Ordinarily, publication of a defamatory statement is presumed if it can be proved that a document containing the statement complained of was distributed to the public.

[24] In this instance, the defendant admitted in his plea that there was communication of the alleged defamatory statement to at least ten members of the Jubilee Hospital Management. On that basis alone, I would hold that publication has been established. But, the defendant contended in argument that the publication was not complete until the plaintiff has proved that firstly, the recipients' of the document read and understood the defamatory nature of the contents of the document and secondly, the plaintiff was defamed by the contents of the document.

[25] The defendant's proposition in this regard is that absolution from the instance ought to be granted because firstly, the plaintiff did not call any witness to prove that the document was read and that the defamatory nature of the contents of the document were understood by the recipients; secondly, that the evidence tendered by the plaintiff failed to prove that he was defamed by the contents of the document.

[26] There is no requirement in our law that in order to establish publication, the plaintiff must prove that the statement was read and understood by the recipients. It is also not a legal requirement that to establish publication the plaintiff must prove that he was defamed by the contents of the document.

[27] In support of the argument that to establish publication the plaintiff must prove that the recipient of the document read and understood the defamatory nature of the statement, the defendant relied, erroneously so, on the judgment in *Vermaak v Van*

der Merwe.⁶ The court in that judgment dealt with a situation where the plaintiff did not understand a particular word used in defaming her, and having considered other cases wherein foreign languages, which were not understood by the plaintiffs in those cases, were used, came to the conclusion that there can be no publication unless and until the addressee understands the defamatory nature of the statement.

[28] Such a conclusion is not a proposition that in each and every defamation case publication is established only when it has been proven that the recipient of the statement read and understood the defamatory nature thereof. *Vermaak* was decided on its particular set of facts. The plaintiff's claim in *Vermaak* was based on the alleged publication to someone of a remark to the effect that the plaintiff was a lesbian (at that time being referred to as a lesbian was regarded as defamatory). The plaintiff did not understand what the word 'lesbian' meant at the time she was told about it and only learnt the meaning thereof later when it was explained to her.

[29] I am not here dealing with a document in which words used therein were not understandable either to the person on whom the document was submitted (the members of the management) or the person to whom the words related to (the plaintiff), no such proposition was even suggested by the defendant. The words used in the document in question are written in English and are easily understandable in their ordinary natural meaning.

[30] The question of whether the members of the management understood the defamatory nature of the contents of the document or whether the plaintiff was defamed by the contents of the documents goes to the heart of the defamation itself and not publication, as will appear more clearly hereunder.

⁶ 1981 (3) SA 78 at 79-80.

[31] I, hold, therefore, that by the mere admission of the defendant that he submitted the document to the management, publication of the defamatory statement was established.

[32] I turn now to deal with the issue of privilege.

Admission of Privilege by the Plaintiff

[33] In a plea of privilege it must be proved that certain persons had an interest in the publication of the words and that the whole world had such an interest. The defendant, in this instance, relies in his defence in a privilege referred to as 'qualified privilege'.

[34] 'Qualified privilege' means that a defamatory statement, whether true or false, has been made in circumstances known as 'privileged occasion'. An occasion is privileged when the person publishing the defamatory matter is under a legal, moral or social duty to do so, or has a legitimate interest in doing so, and the person to whom the statement is published has a corresponding duty or interest to receive it. It may also be remarked that, although the circumstances will be rare in which it becomes the duty of a person to compose and publish a defamatory false statement, in which the person to whom it is published has an interest in receiving such a statement, it is not impossible that such a situation could occur.⁷

[35] It is the defendant's argument that the plaintiff conceded to the defence of privilege in his oral evidence and on that basis he, the defendant, is entitled to absolution from the instance.

⁷ Francois du Bois: Wille's Principles of South African Law 9ed at 1180-1181.

[36] It is indeed so that the plaintiff made certain concession in this regard during cross examination. The plaintiff was asked several questions which sought to convey that when the defendant submitted the document he was under a moral or social duty to do so, and that the management had a reciprocal duty to receive the document. In answer to these questions the plaintiff conceded that having worked as a shop steward he was aware that there was an obligation on an employee of the hospital to report irregularities to the management. He also conceded that since the allegations in the document were serious it was in the interest of the hospital that they be reported even though they may have been false. I accept that on the basis of these concessions the plaintiff admitted the defendant's defence of privilege.

[37] But, this is not the end of the story. 'Qualified privilege', on which the defendant relies, is said to be relative as against absolute privilege where the defendant is protected absolutely in the sense that liability for defamation is completely excluded. Relative privilege on the other hand is limited. The defendant enjoys only provisional or conditional protection, which falls away as soon as the plaintiff proves that the defendant exceeded the bounds of the privileged occasion.⁸

[38] It must, furthermore, be noted that if the apparently privileged occasion is misused by the publisher of the communication for a dishonest purpose, in other words, if the statement is published with an improper motive (with 'malice' as the courts sometimes say) the publication will not be lawful, for there can be no legal, moral or social duty to publish matter for malicious reasons.⁹

⁸ Neethling Potgieter Visser: Law of Delict 7ed at 358.

⁹ Wille's Principles of South African Law 9ed at 1181.

[39] The question that follows the plaintiff's concession would be whether there is reason to believe that the defendant exceeded the bounds of the privileged occasion and submitted the document to the management with an ulterior motive or malice. The answer to this question can be found in the evidence set out hereunder.

39.1 Firstly, the plaintiff testified that the defendant had a grudge against him. Apparently the two were friends. The friendship came to an end when the plaintiff became a member of the management. According to the evidence, the defendant was charged by the hospital for theft. The plaintiff acted as the defendant's representative shop steward during such trial. The defendant was subsequently found guilty and suspended for three months. As a result of this charge the defendant developed a negative attitude towards the management and when the plaintiff became a member of the management the defendant wanted the plaintiff not to take instructions from the CEO. When the plaintiff failed and or refused to do as the defendant wanted, the defendant also developed a negative attitude towards the plaintiff and their friendship ended. According to the plaintiff, that is why the defendant submitted the defamatory document to the management.

39.2 Secondly, in his conclusion in the document, the defendant urges the management to act against the plaintiff because the plaintiff had also on a previous occasion 'reported others, e.g. M.F. Pule and M. Ratihagane [the defendant] who were suspended, investigated and put through disciplinary hearings'. There is evidence on record by Mr Sebola which states that Mr Pule and the defendant were the ones who took photos of the equipment at his house and, that even though

he told them that the plaintiff was not involved in the removal of the equipment from the hospital, they persisted in reporting the plaintiff to management. The plaintiff also testified that the only photo that was shown to him by Mr Khoza during the investigation was that which was taken by Mr Pule.

39.3 The plaintiff having made the aforementioned concessions, further testified that the obligation on the employee to report irregularities should be made only if the irregularities are truthful because if they are untrue they damage the reputation, image and dignity of a person being reported. As such, according to him, the defendant should have verified the veracity of the contents of the document before submitting it to the management, having failed to do so he acted with ulterior motive.

It is evident therefore that the defamatory document was submitted to the management, with ulterior motive and malice.

[40] Of course, that the defendant submitted the document with malice or ulterior motive was not argued by the plaintiff's counsel during his closing argument. However, I am of the view that when considering all the evidence before me, I can *mero motu* infer that the bounds of the privileged occasion were exceeded and conclude, as such, that the defendant submitted the document with malice. The publication was, therefore, unlawful.

[41] It is on that basis that I hold that the grounds raised by the defendant that he be absolved from the instance, holds no water and should be dismissed.

THE MAIN CASE

[42] As earlier stated in this judgment, the defendant closed his case without leading any evidence. Having dismissed his grounds for absolution do I now grant the plaintiff judgment without much ado? I do not think so.

[43] Where the defendant closed her/his case without leading evidence, it is a prerequisite that the plaintiff's evidence must be such that, when she/he closed her/his case and an order for absolution from the instance was not warranted, the defendant's failure to testify should not justify a verdict for the plaintiff unless there is enough evidence to enable the court to say that, having regard to absence of an explanation, the plaintiff's version is more probable.¹⁰

[44] As already stated earlier in this judgment, the elements of defamation which the plaintiff must prove are: unlawfulness/wrongfulness, publication, *animus injuriandi*, defamatory statement, concerning the plaintiff.

[45] I have already made a finding that publication has been proved. The law is that once a plaintiff establishes that a defendant has published a defamatory statement concerning her/him, it is presumed that the publication was both unlawful and intentional. A defendant wishing to avoid liability for defamation must therefore raise and establish a defence which rebuts either unlawfulness or intention.¹¹

[46] The defendant, in this instance, raised defences in his plea to rebut the elements of unlawfulness and/or intention. What he failed to do was to establish those defences by opting to close his case without tendering evidence in support of the respective defences he raised.

¹⁰ See *Marine & Trade Insurance Co Ltd v Van der Schyff* 1972 (1) SA 26 (A).

¹¹ See *Neethling v The Weekly Mail* 1994 (1) SA 708 (A) at 770I-G.

[47] The contents of the document, *in casu*, are on face value defamatory. A statement affecting the moral character, imputing for example dishonesty or the commission of a crime or association with criminals, unethical or unprincipled behaviour or grave misconduct, has been held to be defamatory or capable of a defamatory meaning.¹² To inform people that someone has misappropriated property or removed property of another without the consent of that person or that he was involved in a scam implies that that person is dishonest, untrustworthy and a thief. These words are injurious in their plain and ordinary meaning. The only question is whether when published to persons of ordinary intelligence and experience, they would convey an imputation that the plaintiff is dishonest, untrustworthy and a thief.

[48] The test for defamation is said to be objective and, therefore a question of law which requires determination by the court.

[49] The test involves a two-stage enquiry: the first enquiry is to establish the natural or ordinary meaning of the statement. The issue here is how a reasonable person of ordinary intelligence would have understood the words or what meaning a reasonable reader of ordinary intelligence would attribute to the statement in its context.¹³ In determining such meaning, the court is not concerned with the meaning which the maker of the statement intended to convey or with the meaning given to it by the persons to whom it was published.

[50] The second enquiry is, whether the meaning given to the statement is defamatory, in the sense that the statement tends to lower the claimant in the estimation of right-thinking members of the society generally.¹⁴ The issue is whether

¹² See The Law of South Africa 3ed vol 1 part 2 at 141.

¹³ See *Tsedu v Lekota* [2009] 3 All SA 46 (SCA); 2009 (4) SA 372 (SCA).

¹⁴ See *Mthembi-Mahanyele v Mail & Guardian Ltd and Another* 2004 (6) SA 329 (SCA) paras 26-29.

the words complained of are reasonably capable of conveying to the reasonable reader a meaning which defames the plaintiff; or, whether in the opinion of a reasonable person of ordinary intelligence, the words have the tendency to undermine, subvert or impair a person's good name, reputation or esteem in the community.¹⁵ Even in this instance, the court does not concern itself with the issue of whether the actual observer thought less of the plaintiff or whether the person to whom the statement relates felt defamed.

[51] There was, therefore, no need for the plaintiff to call witnesses to prove whether the members of the management read and understood the contents of the document to be defamatory or for the plaintiff to prove that he was defamed by the contents of the document. When dealing with legal constructs, as is the case herein, such evidence as the defendant called for, is inadmissible.¹⁶

[52] The members of management of a hospital as big as Jubilee Hospital cannot be said to be naïve. They ought to be people of ordinary intelligence who would read and understand the contents of the document for what they are in their ordinary natural meaning. Besides, where the words used in a statement can be easily understood in their ordinary natural meaning it is not necessary for the plaintiff to prove that the addressee understood the defamatory nature of the statement. Likewise, in this instance it was not necessary for the plaintiff to prove that anyone of the ten members of the Jubilee Hospital Management read and understood the defamatory nature of the content of the document submitted to them.

¹⁵ See *South African Associated Newspapers Ltd and Another v Yutar* 1969 (2) SA 442 (A) at 451.

¹⁶ See *Mohamed v Jassiem* 1996 (1) SA 673 (A) 706H-J.

[53] As regards the last element that the statement concerns the plaintiff, it is not in dispute that the contents of the document referred to the plaintiff. The name of the plaintiff is specifically stated in the document. Neither was there a denial in the defendant's plea that the contents of the document refer to the plaintiff.

[54] It appears, therefore, that on the assessment of all the evidence the plaintiff has been successful in proving his defamation claim. What remains for decision is whether the amount of R450 000 (Four Hundred and Fifty Thousand Rand) claimed as damages by the plaintiff is fair and reasonable under the circumstances of this matter.

THE AMOUNT CLAIMED FOR DAMAGES

[55] The successful plaintiff in a defamation action is entitled to an award of general damages to compensate her/him for the impingement on her/his dignity and reputation. The court has a wide discretion in determining the award of general damages as such there is no formula for the determination of such damages.¹⁷

[56] There was no evidence tendered nor was any argument proffered by the defendant in mitigation of the amount to be awarded for damages. As a result, I decide the issue based only on the evidence of the plaintiff.

[57] The nature of the defamatory statement, which implies that the plaintiff is dishonest, untrustworthy and a thief is demeaning and must have caused a great hurt to the plaintiff when considered against the standing of the plaintiff at his work place and in the community. At work, he was a foreman who was supervising a number of employees. He had just been appointed in a managerial position which is an indication that he was trusted by his employer and put in a position of authority.

¹⁷ See The Law of South Africa 3ed vol 14 part 2 at 165.

He was a member of the management which dealt with important and intrinsic matters of the hospital. He had until the incident in question been employed by the Department of Health working at the hospital for over twenty eight (28) years and not once was he ever investigated. This shows a man of integrity who was dedicated to his job.

[58] The plaintiff was also a respected member of the community. He served on the school board and was a staunch member of his church and eventually appointed as a priest. Furthermore he was a married man with four children.

[59] I have already made a finding that the defendant submitted the document with ulterior motive and malice which is aggravating in itself. The conduct of the defendant in receiving information, which is defamatory, from other persons and without verification distributes it, aggravates the situation further.

[60] In fairness to the defendant though, it does not seem as if the document was widely circulated. There is no evidence that besides members of the management and Ms Magano, the document reached anyone else.

[61] Having considered all the above factors, my view is that a fair and reasonable award in the circumstances of this matter would be an amount of R150 000 (One Hundred and Fifty Thousand Rand).

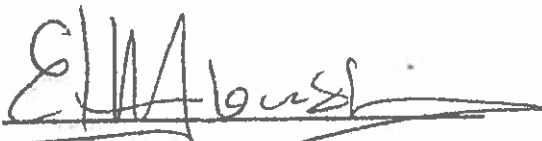
COSTS

[62] The plaintiff as the successful party is entitled to the costs of suit. In argument on costs the plaintiff had argued that a cost order be made that each party pay his own cost should I grant absolution from the instance. But, since absolution was refused, the plaintiff is entitled to the ordinary costs on a party and party scale.

THE ORDER

[63] As a result, I make the following order:

1. The application for absolution from the instance is dismissed.
2. The plaintiff's claim succeeds with costs.
3. The defendant is ordered to pay to the plaintiff an amount of R150 000
(One Hundred and Fifty Thousand Rand).


E.M. KUBUSHI
JUDGE OF THE HIGH COURT

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|------------------------------|-----------------------------------|
| Counsel for Plaintiff | : Adv. M.K. Kekana |
| Instructed by | : Maubane Attorneys |
| Counsel for Defendant | : Adv. G. Kyriazis |
| Instructed by | : Jacobson & Levy Inc. |

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|-------------------------|----------------------------|
| Date heard | : 27 May 2019 |
| Date of judgment | : 19 September 2019 |