IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

CASE NO.: 21021/2020

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

27/10/2022 .....

In the matter between:

FRANCO JACQUES DE WET	First plaintiff
JOHAN WILHELM CHRISTIAAN NEL	Second plaintiff
NEL & DE WET ATTORNEYS	Third plaintiff
And	
OCKER SCHEEPERS	Defendant

JUDGMENT

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van der Westhuizen, J

[1] It is trite that one must endure the everyday hustle and bustle to one's character, but not to the extent that one's reputation is tarnished as a result. In particular where one's professional reputation is at stake.

[2] The first and second plaintiffs practise as attorneys in a partnership under the name and style of the third plaintiff. They are longstanding members of the South African Legal Practice Council. They specialise in deceased estates.

[3] The defendant is a lay person, who holds that which is his, dearly and close to his heart. He was the primary heir to his late mother's estate on her passing. That estate has one particular valuable property, namely immovable property situated in Pretoria North, of which the defendant was the sole beneficiary. It was this property, or rather the manner in which it was allegedly dealt with by the executor of the estate that gave rise to the unfortunate events leading up to this action.

[4] The plaintiffs instituted this action for damages suffered as a result of accusations levelled against them, which the plaintiffs alleged were defamatory in nature and which were publicised widely by the defendant.

[5] The first and second plaintiffs testified and the defendant, who acted in person, also testified. The defendant was clearly at sea in putting his defence forward and managing his defence. He could not afford legal representation and was apparently unsuccessful in obtaining either Legal Aid, or *pro bono* representation.

[6] In terms of the last will and testament of the defendant's late mother, Sanlam Trust Limited was appointed the testamentary executor. The latter appointed the plaintiffs to administer the deceased estate on behalf of Sanlam Trust. Due process was followed in that regard. That is common cause. Sanlam Trust is a client of the third respondent and has

it on its panel for appointment as administrator of estates where Sanlam Trust is appointed as testamentary executor.

[7] As recorded, the defendant is a lay person, not knowledgeable of the law and the intricacies of legal principles, in particular those relating to deceased estates. He lived with his late mother in the aforesaid property prior to her passing. His late mother took care of him. He remained in the property after her passing. However, being unemployed, with no real expectation of being gainfully employed, he could not afford the property rates and the relevant costs applicable to the property. He decided to place the property on the market for sale. He had the misconception that, having inherited it from his late mother on her passing, he owned the property. It was common cause that the estate had not yet been finalised and thus the property was not registered in his name. The defendant had no appreciation that the property was to have been registered in his name before he could offer it for sale in his personal capacity.

[8] The first plaintiff, who dealt with the administering of the deceased estate on behalf of Sanlam Trust, caught wind of the defendant's attempt to sell the property on the open market. At that stage, the defendant had already engaged the services of an estate agent to advertise and sell the property. The first plaintiff informed the defendant that the property fell within the deceased estate, and was not the defendant's property, albeit that the defendant was the sole heir thereto. The defendant was also informed that the executor, and by parity of reasoning the administrator of the estate, held the property in terms of the principles relating to deceased estates. The first plaintiff agreed to grant the appointed estate agent a period within which to promote and advertise the sale of the property, or alternatively to arrange for the sale thereof on auction.

[9] The agreed period having elapsed with no progress in the sale of the property, either on the open market or on auction, the first plaintiff cancelled the mandate of the defendant's appointed estate agent as he

was entitled to do. Thereafter, the first plaintiff instructed a potential auctioneer to provide a value of the property should it be sold on an auction. The probable value that the property would reach on auction was less than that which the defendant was promised by his erstwhile appointed estate agent. This upset the defendant. He wanted more. The defendant was not alive to the realities of selling a property on auction and in the persisting economic climate.

[10] The first plaintiff arranged for the auction to be held. At the auction there was only one real bidder who represented the only possible purchaser. The latter offered an amount close to the value provided by the auctioneer prior to his appointment to undertake the auction. This irked the defendant. He attempted to intervene at the auction and refused the offer outright.

[11] After the auction, the defendant was under the impression that the bidder was the true purchaser, and that he did not represent someone else. After much toing and froing, the defendant, in writing, accepted the offer. This was disputed by the defendant during the leading of evidence. His defence was that he did not sign the e-mail which contained the acceptance. Reluctantly the defendant conceded the point.

[12] The defendant remained irked. He accused the bidder, the true purchaser and the first plaintiff of collusion and underhandedness in the process of the auction and the sale of the property. Those accusations were eventually extended and levelled at the second and third plaintiffs.

[13] The accusations were repeated in complaints to Sanlam Trust - Forensic Services, the Master of the High Court, the South African Legal Practice Council, and to various other individuals.

[14] The complaint to Sanlam Trust - Forensic Services, contained the following statements:

(a) The unlawful conduct was perpetrated by the lawyer appointed to administer the deceased estate;

(b) The said unlawful conduct comprised of the illegal unauthorised acquisition of the deceased estate to an unauthorised buyer through fraudulent and deceptive means;

(c) The first plaintiff was implicated in fraudulent dealings that resulted in the property being sold;

(d) The first plaintiff was involved in fraudulent dealings to enrich his friends behind the defendant's back and without his knowledge in order to acquire the property at a reduced price;

(e) The purchase agreement was forged with criminal intent in the defendant's absence;

(f) The first plaintiff betrayed the defendant's trust while acting on behalf of Sanlam Trust.

[15] The defendant in his complaint lodged with the Master of the High Court, Pretoria, raised similar statements and included the following:

(a) The sale of the property was illegal and the sale agreement was forged with criminal intent, suing falsified buyer's information;

(b) The sale agreement was forged using shell names to create two identities, one which is nothing more than a front company, most likely created by the third plaintiff for their client, Leon Smith, to illegally seize and occupy the property;

(c) The sale agreement, signed by the first plaintiff, was forged without any written agreement between the defendant and Leon Smith;

(d) The purchase agreement was forged with criminal intent to enrich Leon Smith, Dirk Pienaar and the first plaintiff.

[16] Leon Smith, who did the bidding at the aforesaid auction, was the representative of the true buyer, one Esther Nel. Dirk Pienaar was the auctioneer who acted on behalf of Root, the auctioneering entity and who had provided a forced sale value that could be expected at an auction of the property.

[17] The plaintiffs denied that Leon Smith was their client and they were unaware of his existence until the auction. That evidence was not challenged by the defendant at the trial.

[18] The statements made by the defendant to the Legal Practice Council that related to all the plaintiffs were as follows:

(a) The first plaintiff and Dirk Pienaar took steps to derail and de-route the investigation launched by Sanlam;

(b) The first plaintiff deceived the defendant with falsified information, lied to the defendant in his face to acquire the property. This statement was further disclosed to Ms Linda Duvenhage, the first plaintiff's personal assistant;

(c) The first plaintiff has a criminal character;

(d) The first and second plaintiffs intended to make a profit from an illegally acquired property sale transaction based on falsified buyer's information;

(e) The first and second plaintiffs blackmailed the defendant;

(f) The second plaintiff admitted to being an accessory to the illegal acquisition of the property;

(g) The first plaintiff admitted to fraud and theft in an attempt to steal the property from the defendant;

(h) The first and second plaintiffs were in the pocket of Leon Smith, who directs the first and second plaintiffs and uses them to acquire property to the detriment of beneficiaries of deceased estates;

(i) The first and second plaintiffs conduct themselves without any care about the deceased estates or their beneficiaries. The first and second plaintiffs render professional services in an unprofessional manner and that they, through the rendering of services, benefit their clients by handing valuable properties to them for "an apple and onion";

(j) The first and second plaintiffs rigs property sales at auctions;

(k) The first and second plaintiffs are a greedy duo that submit falsified registration papers to the Master of the High Court on such frequent scale that they are over-confident and arrogant in their malpractice to rip off deceased estate inheritors;

(l) The first and second plaintiffs should be struck from the roll of attorneys;

(m) The first and second plaintiffs blackmailed and bullied the defendant.

[19] It is clear from the foregoing statements that the accusations levelled against the plaintiffs by the defendant, were *per se* defamatory.[1] It was wrongful. The intention of the defendant was clearly likely to injure the good esteem of the plaintiffs held by the reasonable or average person

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[1] *Mohamed v Jassiem* 1996(1) SA 673 (SCA) at 703-704

to whom the statements were published.[2] The plaintiffs denied the allegations.

[20] In his plea, the defendant admitted publication to Sanlam Trust. In his evidence in defence, the defendant admitted the publication to the Master of the High Court and the Legal Practice Council as well as to various other individuals. In respect of the publication to Sanlam Trust, the defendant in his plea raised the defence that the statements were true and that the publication was for the benefit of all parties, alternatively that it was fair comment, true, necessary for the purposes of investigating the complaint and that it was not made with malicious intent. The defendant pled in his plea that the complaint was lodged with Sanlam and would be understood by Sanlam that the third plaintiff acted improperly and irregular. It was common cause that the defendant was the author of the statements recorded above.

[21] At the trial the defendant failed to prove that any, or all of his aforesaid statements published, were true or constituted fair comment. The defendant further failed to prove lack of wrongfulness, lack of knowledge of wrongfulness, or in the public interest. The investigation by Sanlam Trust - Forensic Services absolved the plaintiffs from any wrong doing. The complaint to the Master of the High Court is pending. The complaint lodged with the Legal Practice Council apparently did not result in an investigation on receiving the plaintiffs' responses to the complaint lodged by the defendant.

[22] The defendant admitted at the trial that the statements were defamatory and were made with an intent to harm the esteem, reputation and professional reputation of the plaintiffs. The defendant was nonplussed about his conduct and the effect thereof. He simply admitted to what he had done and accepted that it was wrongful. He merely shrugged his shoulders and repeatedly stated that what was done was done.

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[2] *Tsedu v Lekota* 2009(4) SA 372 (SCA)

[23] In argument, the defendant proffered sublimely that he was angry at the manner in which the property was sold and not obtaining as a high purchase price as he had hoped. In my view, at the trial the defendant still did not appreciate or understand the principles relating to deceased estates and the administering thereof. The defence of *rixa* was not raised in the defendant's plea, nor in his evidence at the trial.[3] His sublime mentioning of anger did not comply with the requirements of such defence. The statements were made long after the sale of the property, when he had time to reflect thereon. The plaintiffs attempted to obtain an apology from the defendant before embarking on an action. The defendant blatantly and obtusely refused to apologise, even at the trial.

[24] In an attempt to compel the defendant from continuing with his defamatory statements, the plaintiffs brought an urgent application for an interdict to that effect. After the serving of the order granted, the defendant persisted with his wrongful and injurious conduct. Further in that regard, during the course of this year, the defendant repeated some of the statements to the Office of the Deputy Judge President of this Division and in the face of the interim court order granted against him during 2021. In my view, such conduct cannot sustain a defence of *rixa*, should such defence have been raised in the proper manner.

[25] It follows that the plaintiffs are entitled to a finding of defamation, all the elements thereof having been proven by the plaintiffs.[4]

[26] The issue of damages requires consideration and determination. The purpose of awarding damages in respect of defamation, is to compensate a person for the diminution of his or her personality interest due to the damage-causing event.[5] In effect it is a mere *solatium* for the

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[3] *Benson v Robinson & Co (Pty) Ltd* 1967(1) SA 420 (A) at 426
[4] *Khumalo v Holomisa* 2002(5) SA 401 (CC)
[5] See in general *Mogale et al v Seima* 2008(5) SA 673 (SCA) at [10]-[11]

injury to the personality interests of the defamed plaintiff. It is trite that the courts are not generous in their awards for *solatia*.[6]

[27] It is notorious to prove the quantum of such damages.[7] The main factor in determining the quantum relates to the seriousness of the defamation. There are other factors that are relevant in such determination, namely, the nature and extent of the publication, the reputation and character and conduct of the plaintiff, and the motives and conduct of the defendant.[8]

[28] In the present instance, the defamation is serious, the publication was primarily made to institutions, Sanlam Trust and the Master of the High Court, that regularly deal with the plaintiffs and in particular rely on their professionalism and good character and conduct in the plaintiffs' dealings with those entities. The defamation published to the Legal Practice Council is more serious and damning. The core of the entitlement to remain on the roll of attorneys is their fitness to practise as an attorney and as an officer of the Court. The plaintiffs' professional reputation was seriously tarnished and damaged. It would remain a black spot against their names in future. No *solatium* could repair that damage.

[29] It was submitted on behalf of the plaintiffs, with reference to alleged comparable cases, that an amount of R300 000.00 each would be fair and reasonable in the present circumstances. In *Argus Printing and Publishing Co Ltd v Inkatha Freedom Party*[9] the Court held that the purpose of awarding damages for defamation is a method whereby a plaintiff vindicates his reputation, and not as a road to riches. This may be true as a general principle. However, where the professional reputation of the plaintiff is tarnished in the eyes of entities such as the

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[6] *Molgale, supra,* at [18]
[7] *Mogale, supra,* at [8]
[8] *Mogale, supra,* at [13]-[16]
[9] 1992(3) SA 579 (AD) at 590E-F

Mater of the High Court and the Legal Profession Council, and in the eyes of a client that has the plaintiff on a specific panel to do its work, the vindication of the professional reputation may pose difficulty.

[30] The conduct of the defendant was inexcusable, yet regard must be had to the defendant's particular circumstances. He had the opportunity to offer an apology, which if provided, would not have resulted in an action for defamation against him. Taking into consideration that the plaintiffs would have been satisfied with an apology, the *solatium* to be awarded may not justify an unreasonable high amount in these particular circumstances, despite the alleged comparable awards.

[31] In my view, in the present circumstances, a fair and reasonable *solatium* would be R50 000.00 each in respect of the first and second plaintiffs.

[32] In their particulars of claim the plaintiffs entered a second claim that related to the loss of profit due to the decline in instructions received from Sanlam Trust whilst the said investigation was undertaken. However, at the trial, the plaintiffs abandoned that claim.

[32] There is no reason why costs should not follow the event. However, the plaintiffs could have instituted the action in the appropriate magisterial jurisdiction.

I grant the following order:

1. The defendant is to pay an amount of R50 000.00 to the first plaintiff;

2. The defendant is to pay an amount of R50 000.00 to the second plaintiff;

3. The defendant is to pay the costs of suit on the appropriate Magistrates' scale.

C J VAN DER WESTHUIZEN
JUDGE OF THE HIGH COURT

Date of Hearing:	5 & 6 October 2022
On behalf of Applicant:	PP Fereira
Instructed by:	Nel and De Wet Attorneys
On behalf of Respondent:	In Person
Judgment handed down:	27 October 2022