



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

**CASE NO: 38734/2020**

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

**18 FEBRUARY 2022**

**Date**

**K. La M Manamela**

In the matter between:

**MEDIA 24 t/a DAILY SUN**

**1<sup>st</sup> Defendant/1<sup>st</sup> Applicant**

**MAPULA NKOSI**

**2<sup>nd</sup> Defendant/ 2<sup>nd</sup> Applicant**

**ZAMOKUHLA MDLULI**

**3<sup>rd</sup> Defendant/3<sup>rd</sup> Applicant**

**CAXTON & CTP PUBLISHERS & PRINTERS LTD**

**4<sup>th</sup> Defendant/4<sup>th</sup> Applicant**

and

**PRECIOUS SITHOLE**

**Plaintiff/Respondent**

**DATE OF HEARING: 08 NOVEMBER 2021.**

**DATE OF JUDGMENT:** This judgment was handed down electronically by circulation to the parties' representatives by email. The date and time of hand-down is deemed to be 10h00 on **18 FEBRUARY 2022.**

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**JUDGMENT**

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**KHASHANE MANAMELA, AJ**

## ***Introduction***

[1] Ms Precious Sithole is a traditional healer from east of Johannesburg. She is the plaintiff in the defamation action instituted in 2020 against the abovementioned defendants. She is currently before the Court as the only respondent in this interlocutory application brought by the defendants (as the applicants). Both the action and the motion proceedings relate to a news article or story published by the defendants on 12 June 2020 in the Daily Sun newspaper (the Daily Sun). The journalist or author credited with the story is Mr Zamokuhle Mdluli, the third applicant and defendant. Ms Mapula Nkosi, the second applicant and defendant, was the editor of the Daily Sun at the time of the publication of the article. Media 24 trading as Daily Sun, the first applicant and defendant, is cited as the owner and publisher of the Daily Sun. The fourth applicant and defendant, namely Caxton and CTP Publishers and Printers Ltd, is cited as the printer of the Daily Sun. I shall refer to these applicants and/or defendants jointly as the Defendants, and to Ms Sithole as the Plaintiff.

[2] The Plaintiff considered the published article defamatory. She sued the Defendants for damages in the amount of R500 000. The Defendants, after their delivery of a notice of intention to defend the Plaintiff's claim, delivered a notice under Rules 18(12)<sup>1</sup>, 23(1)<sup>2</sup> and 30(2)b<sup>3</sup> of the Uniform Rules of this Court. The notice required the Plaintiff to remove seven causes of complaint. The complaints are primarily that the Plaintiff's particulars of claim are insufficiently pleaded and, therefore, constitute an irregular step, alternatively, are excipiable. The Plaintiff did not comply with the notice and the Defendants ultimately brought this application to set aside the particulars of claim, alternatively, to compel the Plaintiff to amend them. The application is opposed by the Plaintiff.

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<sup>1</sup> See footnote 31 below, for a reading of Rule 18 in the material respect.

<sup>2</sup> See footnote 32 below, for a reading of Rule 23 in the material respect.

<sup>3</sup> See footnote 33 below, for a reading of Rule 30 in the material respect.

[3] The application was heard on 8 November 2021. Mr BD Stevens appeared for the Defendants and Mr M Baloyi appeared for the Plaintiff. I reserved this judgment after listening to both counsel. Next, I deal with the particulars of claim and the complaints before turning my attention to the submissions made on behalf of the parties.

***Plaintiff's particulars of claim and the Defendants' complaints***

[4] The material part of the particulars of claim against which the complaints are directed is the following:

“7.

On the 12<sup>th</sup> of June 2020, an article titled “**NAKED AXE MAN’S RAMPAGE**” was in The Daily Sun newspaper. A copy of the article is annexed hereto and marked “**Annexure A**”

8.

The Daily Sun Newspaper is a newspaper widely distributed in South Africa and widely read by the public which narrated an incident said to have occurred at the Manzinis family’s house on 8<sup>th</sup> June 2020, where a naked man carrying an axe broke into the premises and butchered Thulani Sgubudu a forty five (45) years old man with an axe.

9.

The said article stated, “I’ve arrived at the black house, show me the light, Gogo Dubulamanzi, should I kill them all.” Which suggested and understood that the Plaintiff, commonly known by her practice name as Gogo Dubulamanzi, sent an assailant to murder neighbour’s Son, to wit Thulani Sgubudu.

10.

The said words, in the context of the article, are wrongful and defamatory of Plaintiff in that they were intended and were understood by readers of the newspaper to mean that Plaintiff engages in or associates herself with dishonourable conduct in respect of using evil spirit to possess people and use such possessed people to commit murder.

11.

Alternatively, the contents of the said article are wrongful and defamatory in that it was intended to mean and was understood by persons to whom it was addressed to mean that plaintiff:

- 11.1 Is guilty of criminal conduct in that she participated in or associated herself with the activities of the murder;
- 11.2 Is a criminal and practices witchcraft and possesses people with evil spirit to cause murder;
- 11.3 Acted with a common purpose with the perpetrator of the murder referred to in the article, in that she led the murderers to the house where the murder was committed.

12.

The imputation of dishonourable conduct on Plaintiff, by First Defendant, alternatively Second Defendant, alternatively Third Defendant, alternatively Fourth Defendant caused Plaintiff to be shunned in her community, as Plaintiff was on 20<sup>th</sup> of June 2020 ejected from her home by a mob of community members and banned from the community. As a result, the Plaintiff had to report the matter with the South African Police (Eden Park Police Station) as per case no: 165/06/2020.

13.

Such imputation infringed and impaired on Plaintiff's right to dignity and reputation, in that, Plaintiff's family and herself has been displaced by the community which held her in high regard. The Plaintiff's good name was degraded by the suggestion that she practice the use of evil spirits and employ possessed people to commit murder.

14.

Due to the defamation, the Plaintiff has been damaged in her dignity and reputation, and suffered damages in the amount of R500 000.00 (FIVE HUNDRED THOUSAND RAND).

15.

Therefore Plaintiff claims against the Defendants, jointly and severally, the payment of the amount of R500 000.00 (FIVE HUNDRED THOUSAND RANDS) being damages."

[5] The Defendants complained about some of the paragraphs, quoted above, from the Plaintiff's particulars of claim. Seven causes of complaint were raised in terms of a notice

delivered under Rule 30(2)(b), read with Rules 18(12) and 23(1) of the Uniform Rules.<sup>4</sup> The details of the causes of complaint will be provided in the discussion of the facts below.<sup>5</sup> Suffice for now to simply state that the notice sought the Plaintiff to remove the causes of complaints, but in vain. This application ensued.

### ***Submission on behalf of the parties***

#### *Defendants' case*

##### *General*

[6] In support of the grounds or causes of complaint, Mr Stevens, acting as counsel for the Defendants, raised a number of issues in his written and oral argument. But it will not be necessary to traverse every contour of his argument, although I will consider everything raised for purposes of the determination to be made.

[7] The Defendants' case is simply that the Plaintiff's particulars of claim fail to comply with Rule 18(4)<sup>6</sup> as they contain insufficient particularity to enable the Defendants to reply thereto. In addition that, due to the same defect the particulars are vague and embarrassing. They ought to be either set aside in terms of Rule 18(12), read with Rule 30,<sup>7</sup> both being the Uniform Rules of this Court. I hasten to point out – with respect - that Rule 18(12) has nothing to do with pleadings being “vague and embarrassing”, but only with regard to pleadings which may be “deemed to be an irregular step”. It is Rule 23<sup>8</sup> which deals with exceptions, including on the ground that a pleading is vague and embarrassing. But the Defendants and/or their

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<sup>4</sup> See footnotes 31-33 below, for a reading of Rules 18, 23 and 30 in the material respect.

<sup>5</sup> See pars [9]-[18] and [27]-[32], below.

<sup>6</sup> See footnote 31 below.

<sup>7</sup> See footnote 33 below.

<sup>8</sup> See footnote 32 below.

representatives are obviously aware of all these. The reliance upon the decision in *Sasol Industries (Pty) Ltd t/a Sasol I v Electrical Repair Engineering (Pty) Ltd t/a L H Marthinusen*<sup>9</sup> suggests that the Defendants are aware that an election between the procedure under Rule 23 and that under Rule 30 is necessary. The two procedures serve different purposes and involve different methods of determination. I will revert to this below.

[8] The basic principle of the particulars of claim is that they ought to be framed in such a way that a defendant is reasonably and fairly required to plead to them.<sup>10</sup> Generally, the objective of pleadings is to enable each party to “come to trial prepared to meet the case of the other and not be taken by surprise”.<sup>11</sup> This is the essence of the requirements in Rule 18.<sup>12</sup> It also enables the Court to isolate the issues to be adjudicated upon from a clear basis emerging from the factual allegations made. The Defendants say the Plaintiff breached Rule 18(4) on seven grounds, with regard to the particulars of claim. I discuss these next.

#### *First cause of complaint*

[9] This cause of complaint is directed towards paragraphs 9 and 10<sup>13</sup> of the particulars of claim. The Defendants complain that the Plaintiff relied on the innuendos pleaded in paragraph 10 to attribute one or more of secondary meanings to what is pleaded in paragraph 9. The Defendants argue that this is impermissible in terms of the rules and the law.

[10] The Defendants explain that to succeed in her claim for defamation, the Plaintiff ought to establish that there was a publication of a defamatory statement personally about or

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<sup>9</sup> *Sasol Industries (Pty) Ltd t/a Sasol I v Electrical Repair Engineering (Pty) Ltd t/a L H Marthinusen* 1992 (4) SA 466 (W).

<sup>10</sup> *HT Group (Pty) Ltd v Hazelhurst and another* [2003] 2 All SA 262 (C) at par [7].

<sup>11</sup> *Ibid.*

<sup>12</sup> See footnote 31 below, for a reading of Rule 18 in the material respect.

<sup>13</sup> See par [4] above for a reading of paragraphs 9 and 10 of the particulars of claim.

concerning her. The statement, for example, may have a “primary meaning” given to it in its context by a reasonable person.<sup>14</sup> A “secondary meaning” of a statement refers to an innuendo or inference drawn, derived from special circumstances which can be attributed to the statement only by someone having knowledge of the special circumstances.<sup>15</sup> The innuendo implies the knowledge of the facts other than those contained in the impugned statement rendering the statement defamatory of the complainant.<sup>16</sup>

[11] The test in this regard is objective. The determination by the Court involves a two-stage inquiry whether the “primary meaning” of the statement is defamatory. First, it needs to be determined whether the words are reasonably capable of reference to the complaining Plaintiff when considered from a plain reading of the impugned statement. Second, it needs to be determined whether a reasonable person would regard the words or statement to be defamatory.

[12] It is submitted on behalf of the Defendants that from a plain reading of the article the Plaintiff complains about, the primary meaning of the words in the article are not *per se* defamatory. This is so when one particularly considers the pleaded material, which includes a quotation by a third party in his exact words. The article contains no reference to the Plaintiff herself. In other words, the pleaded material (alleged to be defamatory) is not based on the objective meaning of the words relied upon, but the innuendos derived from the subjective interpretation of the actual statement. The Plaintiff relies on the “secondary meaning” of the statement and, therefore, the innuendos or inferences drawn ought to be capable of rendering

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<sup>14</sup> *Le Roux and others v Dey (Freedom of Expression Institute and Restorative Justice Centre as Amici Curiae)* 2011 (3) SA 274 (CC) at par [87].

<sup>15</sup> *Le Roux v Dey* at par [87], relying on *Khumalo and Others v Holomisa* 2002 (5) SA 401 (CC) (2002 (8) BCLR 771; [2002] ZACC 12) at pars 27 –28.

<sup>16</sup> *Le Roux v Dey* at [87].

the statement defamatory. This ought to be the case with the pleaded innuendos in the Plaintiff's particulars of claim.<sup>17</sup>

[13] To successfully rely on innuendos in a defamation lawsuit, a claimant, such as the Plaintiff, ought to plead the special circumstances or facts from which the meanings given to the words or statement are derived.<sup>18</sup> A claimant cannot simply rely on the meanings given to the words or statement without laying a factual basis therefor. The defamatory sense attributed to the statement ought to be pleaded. The pleading is also to include that the statement was understood as such by those to whom it was published. The Defendants argue that the Plaintiff's particulars of claim fail and do not meet this threshold. This renders the particulars of claim vague and embarrassing to sustain an exception.

[14] Further, the Defendants argue that the manner in which the innuendos are pleaded in the particulars of claim would preclude the Plaintiff from adducing evidence that the statements are defamatory *per se*. This is so, as the Plaintiff cannot stray away from the innuendos relied upon in paragraph 10 of the particulars of claim.

[15] The determination of the Plaintiff's cause of action on the basis of the pleadings as they currently appear would require of this Court to infer or read in the innuendos in paragraph 10 into the article itself. This is impermissible, it is submitted on behalf of the Defendants. The

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<sup>17</sup> Plaintiff's particulars of claim at par 10, quoted under par [4] above.

<sup>18</sup> *Molotlegi and another v Mokwalase* [2010] 4 All SA 258 (SCA) at par [14]. The following *dicta* from *Hassen v Post Newspapers (Pty) Ltd and others* [1965] 3 All SA 528 (W) at 533 was relied upon by the Supreme Court of Appeal in *Molotlegi v Mokwalase* at par [15]: "When a secondary meaning is relied upon, evidence is necessary because the plaintiff must prove the special circumstances by reason whereof the published matter would, to those aware of the special circumstances, bear the secondary meaning relied upon. The plaintiff must prove, further, upon a balance of probabilities, that there were persons, among those to whom the publication was made, who were aware of the special circumstances, and to whom, it can therefore be inferred, the publication is likely to have conveyed the imputation relied upon." The two authorities were relied upon in the unreported decision in *Smalle and another v Southern Palace Investments 440 (Pty) Limited and another* (121/2016) [2016] ZASCA 189 (1 December 2016) at pars [25]-[26].



Plaintiff has simply pleaded insufficient facts and circumstances to justify any reliance on the innuendos in paragraph 10, hence the Defendants' case based on the breach of Rule 18(4) and on the fact that no cause of action is disclosed by the current particulars of claim.

*Second cause of complaint*

[16] The argument in support of this ground is similar to that for the first ground. The current ground relates to paragraphs 11.1 to 11.3 of the particulars of claim. The Defendants complain that the Plaintiff relies on the innuendoes in order to attribute secondary meaning(s) to the contents of the article, whilst she has failed to plead additional facts or circumstances justifying reliance on the innuendoes pleaded in paragraph 11.

*Third cause of complaint*

[17] In the third ground the Defendants point out that the understanding of the article by the Plaintiff is irrelevant for the purposes of determining her alleged defamation. The test used is objective and is that of a hypothetical bystander and, therefore, the Plaintiff's inclusion in the pleadings that she understood the article to mean a particular thing is impermissible, in as much as it is vague and embarrassing.<sup>19</sup>

*Fourth, fifth, sixth and seventh grounds*

[18] As already indicated, the Defendants seek relief in this application based on seven grounds. The fourth and fifth grounds concern paragraph 9 of the particulars of claim. And the sixth ground deals with paragraph 12 of the particulars of claim, whilst seventh ground is about

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<sup>19</sup> *Ibid.* See also *Tsedu and others v Lekota and another* 2009 (4) SA 372 (SCA) at par [13] and *Mthembi-Mahanyele v Mail & Guardian Ltd and another* 2004 (6) SA 329 (SCA) at par [25] *et seq.*

the inclusion of the reference “applicant” in the particulars of claim. These grounds are discussed further below.<sup>20</sup>

*Plaintiff's case*

[19] The Plaintiff joined issue with the fact that the Defendants have raised the argument that the particulars of claim do not disclose a cause of action, and are vague and embarrassing, despite this being an application under Rule 30. This is impermissible. The Defendants ought to have raised the issues by way of an exception. The Rule 30 procedure is inapplicable to matters of substance and is applicable to the non-compliance with the Uniform Rules.<sup>21</sup> The determination of whether or not the particulars of claim disclose a cause of action constitutes a matter of substance and, therefore, is incapable of determination by any other way, but through an exception.<sup>22</sup> It is acknowledged on behalf of the Plaintiff that, a pleading may give rise to complaints that it lacks the requisite particularity (contrary to Rule 18(4)) and further be excipiable. But these processes or Rules provide for different situations and require different tests.<sup>23</sup> Therefore, the exception against the Plaintiff's particulars of claim is improperly raised in this application.

[20] Although, I have expressed a similar lament above, I do not think that the Plaintiff would suffer any prejudice if the issues regarding the applicable procedure or underlying rule is overlooked by the Court. In fact, no prejudice is shown or apparent from the papers. This is not the same as saying that the differences in requirements and approaches for determination between the two procedures will be ignored or conflated. This Court will be mindful of all these. Therefore, I will proceed with the determination of the issues in the merits.

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<sup>20</sup> See pars [27]-[32], below.

<sup>21</sup> *Sunday Sun Newspaper and Others v Mokondelela* (2018/46689) [2020] ZAGPJHC 104 (15 Apr 2020) at [35].

<sup>22</sup> *Ibid.*

<sup>23</sup> *Sunday Sun Newspaper v Mokondelela* at [36].

[21] After setting out the elements of defamation, it is submitted on behalf of the Plaintiff that once it is established that the Defendants published the defamatory statement concerning the Plaintiff, a rebuttable presumption arises that the publication was intentional and unlawful.<sup>24</sup> Thereafter, it is up to the Defendants to adduce evidence to the contrary in deflection of the resultant onus of proof.<sup>25</sup> In *casu* the allegations or particulars pleaded by the Plaintiff are not only sufficient and clear,<sup>26</sup> but contain all the material averments necessary to sustain a defamation claim.

[22] Also, there is no prejudice to the Defendants. Prejudice in the context of Rule 30(1) refers to prejudice which will be experienced in the further conduct of the case if the irregular step is not set aside.<sup>27</sup> But in this type of applications, the Court ought to avoid interference or the adoption of a rigid approach or technical objections against less than perfect procedural steps in the absence of prejudice, lest the determination of the merits is rendered less expeditious and possibly expensive.<sup>28</sup>

[23] It is further pointed out on behalf of the Plaintiff that the determination of an exception requires that a pleading be read as a whole and not with the paragraphs thereof read in isolation. The objection that a pleading is vague and embarrassing ought to be with regard to the whole cause of action.<sup>29</sup> For a pleading would not be excipiable unless a defendant persuades the court that on every interpretation no cause of action has been revealed, due to a plaintiff having failed to adequately place the defendant in a position where the latter knows what the plaintiff's case

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<sup>24</sup> *Le Roux v Dey* at [85].

<sup>25</sup> *Ibid.*

<sup>26</sup> *Jowell v Bramwell-Jones and others* 1998 (1) SA 836 (W) at 901.

<sup>27</sup> *Afrisun Mpumalanga (Pty) Ltd v Kunene NO and others* 1999 (2) SA 599 (T) at 611.

<sup>28</sup> *Trans-African Insurance Co Ltd v Maluleka* 1956 (2) SA 273 (A) at 277 albeit that it concerned different rules of Court.

<sup>29</sup> *Jowell v Bramwell-Jones* at 905-906, cited with approval in *Inzinger v Hofmeyr and others* (7575/2010) [2010] ZAGPJHC 104 (4 November 2010) at par 4.

is, for its attorneys to take instructions and record a meaningful response to the particular pleading.<sup>30</sup>

### ***Applicable legal principles***

[24] This application is primarily based on the Uniform Rules of this Court relating to the drafting of pleadings and the taking of irregular steps by parties in litigation. In the main the Defendants relied on Rule 18(4) and (12),<sup>31</sup> as read with Rule 23<sup>32</sup> and brought this application under Rule 30.<sup>33</sup> I have already ruled on the compatibility of these procedures or the lack thereof.

[25] In *Le Roux and others v Dey (Freedom of Expression Institute and Restorative Justice Centre as Amici Curiae)*<sup>34</sup> the Constitutional Court *per* Brand AJ held that, the elements of defamation, as stated in *Khumalo and Others v Holomisa*,<sup>35</sup> are the following: (a) the wrongful,

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<sup>30</sup> *Absa Bank Ltd v Boksburg Transitional Local Council (Government of the Republic of South Africa, Third Party)* 1997 (2) SA 415 (W) at 422.

<sup>31</sup> Rule 18 reads as follows in the material part: “(4) Every pleading shall contain a clear and concise statement of the material facts upon which the pleader relies for his claim ... with sufficient particularity to enable the opposite party to reply thereto. ... (12) If a party fails to comply with any of the provisions of this rule, such pleading shall be deemed to be an irregular step and the opposite party shall be entitled to act in accordance with rule 30.”

<sup>32</sup> Rule 23 reads as follows in the material part: “(1) Where any pleading is vague and embarrassing, or lacks averments which are necessary to sustain an action or defence, as the case may be, the opposing party may, within the period allowed for filing any subsequent pleading, deliver an exception thereto and may apply to the registrar to set it down for hearing within 15 days after the delivery of such exception: Provided that — (a) where a party intends to take an exception that a pleading is vague and embarrassing such party shall, by notice, within 10 days of receipt of the pleading, afford the party delivering the pleading, an opportunity to remove the cause of complaint within 15 days of such notice; and (b) the party excepting shall, within 10 days from the date on which a reply to the notice referred to in paragraph (a) is received, or within 15 days from which such reply is due, deliver the exception...”

<sup>33</sup> Rule 30 reads in the material part: “(1) A party to a cause in which an irregular step has been taken by any other party may apply to court to set it aside. (2) An application in terms of subrule (1) shall be on notice to all parties specifying particulars of the irregularity or impropriety alleged, and may be made only if ... the applicant has, within ten days of becoming aware of the step, by written notice afforded his opponent an opportunity of removing the cause of complaint within ten days. ... (3) If at the hearing of such application the court is of opinion that the proceeding or step is irregular or improper, it may set it aside in whole or in part, either as against all the parties or as against some of them, and grant leave to amend or make any such order as to it seems meet.”

<sup>34</sup> *Le Roux and others v Dey (Freedom of Expression Institute and Restorative Justice Centre as Amici Curiae)* 2011 (3) SA 274 (CC).

<sup>35</sup> *Khumalo v Holomisa* at par [18].

(b) intentional, (c) publication of, (d) a defamatory statement, (e) concerning the plaintiff.<sup>36</sup> But the same decision further held that a plaintiff is not required to establish all these elements for a successful defamation claim, but only the publication of the defamatory material concerning herself which would then be presumed to be both wrongful and intentional.<sup>37</sup> To rebut the presumption a defendant would have to raise a defence capable of excluding either wrongfulness or intent in order to avoid liability for the defamation.<sup>38</sup>

### *Submissions and legal principles (discussed)*

[26] Essentially what needs to be determined here is whether or not the Plaintiff's particulars of claim breach Rule 18(4), for containing insufficient particularity to enable the Defendants to reply thereto, alternatively Rule 23, for disclosing no cause of action or for being vague and embarrassing to the prejudice of the Defendants. The determination required is on the grounds as alleged by the Defendants and opposed by the Plaintiff.

[27] The first cause of complaint: The Defendants complain under this ground about paragraphs 9 and 10<sup>39</sup> of the particulars of claim. It is submitted that the Plaintiff relies on the innuendos pleaded in paragraph 10 to attribute one or more of secondary meanings to what is pleaded in paragraph 9. This is impermissible without the Plaintiff pleading the facts and circumstances relied upon to justify the alleged innuendos. The latter is required to also demonstrate that the article conveyed to the readers of the newspaper the secondary meanings pleaded. Currently, there is insufficient facts and circumstances to justify the innuendos pleaded in paragraph 10.

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<sup>36</sup> *Le Roux v Dey* at par [84].

<sup>37</sup> *Ibid.*

<sup>38</sup> *Le Roux v Dey* at par [84].

<sup>39</sup> See par [4] above for a reading of paragraphs 9 and 10 of the particulars of claim.

[28] The second cause of complaint: This ground of complaint is directed at paragraph 11. The Defendants submit that the Plaintiff supported its pleaded cause of action by alleging that the article is wrongful and defamatory of the Plaintiff on the basis of the innuendos pleaded in paragraphs 11.1 to 11.3 which attributed secondary meaning(s) to the content of the article. This was done without the Plaintiff pleading the facts and circumstances relied upon to justify the alleged innuendos, particularly to demonstrate that the article conveyed the pleaded secondary meanings to the persons to whom it was addressed. There is simply no sufficient facts and circumstances to justify the innuendos pleaded in paragraphs 11.1 to 11.3.

[29] The third cause of complaint: The third ground (as with the first ground) is directed towards paragraph 9 of the particulars of claim. In this regard the Defendants say that as the Plaintiff's cause of action is solely based on defamation, the Court would look at the words in the article to determine whether they are reasonably capable of conveying to a reasonable reader a meaning which defames the Plaintiff. The Plaintiff's own subjective view or understanding of the article is irrelevant. The Defendants further states that the particulars of claim do not say who understood that the Plaintiff sent an assailant to murder the neighbour's son. I understand this to be primarily directed towards the words or phrase "[w]hich suggested and understood" [italics added] in paragraph 9.

[30] The fourth cause of complaint: Under the fourth ground the Defendants complain also of paragraph 9. It is submitted that the Plaintiff's words in paragraph 9 do not concern the Plaintiff as she is not directly referred to in the defamatory statement. The Plaintiff ought to have pleaded the circumstances identifying her to the addressees of the article. The Defendants submit that it is not sufficient that the Plaintiff had pleaded that she "*is commonly known by her practice name Gogo Dubulamanzi*" [italics added]. The Plaintiff ought to have pleaded

who commonly knows her by the alleged practice name “*Gogo Dubulamanzi*”; which practice or organisation bestowed upon her the practice name “*Gogo Dubulamanzi*”, and which practice she is referring to.

[31] The fifth cause of complaint: The fifth cause of complaint is also directed towards paragraph 9 of the particulars of claim. The Defendants complain that the Plaintiff did not plead who the “neighbour” is and have left them to speculate.

[32] The sixth cause of complaint: Under the sixth ground the Defendants complain that paragraph 12 of the particulars of claim refers to dishonourable conduct without disclosing what dishonourable conduct is being referred to. This leaves the Defendants with no option but to speculate which dishonourable conduct is being referred to.

[33] The seventh cause of complaint: The seventh ground complains about the reference to “applicant” instead of “plaintiff” in the prayer part of the particulars of claim as these are action proceedings.

[34] The submissions on behalf of the Plaintiff did not specifically deal with the averments or submissions on behalf of the Defendants under the seven causes or grounds of complaint. Briefly, the submissions on behalf of the Plaintiff are as follows. First, that once the publication of the defamatory statement concerning the Plaintiff is acknowledged or established, the Defendants are saddled with a rebuttable presumption that the publication was intentional and unlawful and bears the evidential burden.<sup>40</sup> Second, that the Court should steer away from interference, a rigid approach or allowing technical objections. Third, the determination of an

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<sup>40</sup> *Le Roux v Dey* at [85].

exception requires that a pleading be read as a whole and not with the paragraph thereof read in isolation. Fourth, exceptions can only lie against material which on every interpretation do not reveal a cause of action where the defendant is un-abled to know the plaintiff's case and meaningfully respond thereto.<sup>41</sup>

### ***Conclusion***

[35] Upon consideration of the submissions and the applicable legal principles above, I find merit with regard to the causes or grounds of complaint number 1, 2, 3 and 4.

[36] The fifth cause of complaint will be dismissed, as although the neighbour herself/himself is not named, her son (i.e. Thulani Sgubudu) is indeed named. But even if no name was mentioned, the pleaded particulars of claim are sufficient to enable the Defendants to reasonably plead. The Defendants do not need the name to admit or deny the claim. For the rest they would use the mechanism of the request for further particulars to obtain the details of the neighbour before proceeding to trial.

[37] The sixth cause of complaint is dismissed because when paragraph 12 is read in conjunction with paragraphs 10 and 11, one is able to understand what dishonourable conduct is being referred to. In fact, in paragraph 10 it is clearly stated that the alleged "dishonourable conduct [is] in respect of using evil spirit to possess people and use such possessed people to commit murder". Therefore, the only interpretation which would lead the Defendants to speculate is when paragraph 12 is considered in isolation.<sup>42</sup>

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<sup>41</sup> *Absa Bank v Boksburg TLC* at 422.

<sup>42</sup> See par [23] above.



[38] And the seventh cause of complaint will also be dismissed because it constitutes a technical objection. The reference to “applicant” instead of “plaintiff” is less than perfect, but not excipiable. There appears to have been an amendment or notice to that effect in November 2020 filed by the Plaintiff’s erstwhile attorneys. And my recollection is also that this ground may have not been raised in oral argument before me. Therefore, the order granted is only in the event that the Plaintiff’s amendment was not finalised and/or that the Defendants did not formally desist with their case based on this ground.

[39] Subject to what is stated above regarding the seventh cause of complaint, costs will follow the outcome, this or the other way.

### ***Order***

[40] In the premises, I make an order in the following terms:

- a) the Applicants’/Defendants’ causes or grounds of complaint 1, 2, 3 and 4 are upheld with costs;
- b) the Applicants’/Defendants’ causes or grounds of complaint 5, 6 and 7 are dismissed with costs;
- c) the Respondent / Plaintiff is ordered to amend paragraphs 9, 10 and 11 of her particulars of claim to remove the first, second, third and fourth causes of complaint referred to in the Applicants’/Defendants’ Notice in terms of Rules 18(12), 23(1) and 30(2)(b) dated 15 September 2020 within 15 (fifteen) days from date of receipt of this judgment or order by the Respondent’s / Plaintiff’s

representatives by email from the Registrar of this Court or the uploading of the judgment or order on CaseLines, whichever is earlier, and

- d) in the event of Respondent / Plaintiff failing and/or refusing to comply with c) hereof, leave is granted for the Applicants / Defendants to approach this Court on the same papers, duly supplemented, for an order dismissing the Respondent's / Plaintiff's claim in the main action.



**Khashane La M. Manamela**  
**Acting Judge of the High Court**  
**18 February 2022**

**Appearances:**

|                                 |   |  |
|---------------------------------|---|--|
| For the Applicants / Defendants | : | Adv BD Stevens   |
| Instructed by                   | : | Jurgens Bekker Attorneys Inc,<br>Brooklyn, Pretoria                    |
| For the Respondent / Plaintiff  | : | Adv M Baloyi<br>(heads of argument by MS Mazibuko)                     |
| Instructed by                   | : | Mokhomo Attorneys, Bloemfontein<br>c/o Mukwevho NP Attorneys, Pretoria |