

CIV\T\503\93IN THE HIGH COURT OF LESOTHO

IN THE MATTER BETWEEN:

THABISO MPHOFU

Plaintiff

and

LOTI BRICK (PTY) LTD

1st Defendant

THABISO MLUNGUANE (EDITOR OF THE MIRROR)

2nd Defendant

EPIC PRINTERS

3rd Defendant

JUDGMENT

Delivered by the Honourable Mr. Justice J.L. Kheola
on the 14th day of March, 1994

In this action the plaintiff is claiming:

1. Payment of M100,000-00 (One hundred thousand Maloti) as damages plaintiff has suffered as the result of the aforesaid defamatory words.
2. Payment of M50,000-00 (Fifty thousand Maloti) as damages plaintiff has suffered and/or likely to suffer for the loss of his business.
3. Costs of Suit.
4. Further and/or alternative relief.

In his declaration and his oral evidence before this Court the plaintiff states that he is a building contractor and also

rents out trucks to people who need transport of goods. In August, 1993 he had six (6) trucks and people used to hire them

The first defendant was his customer who regularly hired his truck from which he received an income of between M9,000-00 and M12,000-00 per month. His other customers were M&C. Kingsway Construction and the Lesotho Government.

On the 13th August, 1993 he read a copy of The Mirror of the same date and found an article which was defamatory to him. The copy of The Mirror was handed in and the article in question reads as follows:

"According to the management of Loti Brick, one of the truckowners, whose truck has for a long time been engaged by Loti Bricks, was caught stealing clay which is used to manufacture bricks at Ha Thetsane and secretly transporting it to Unibrick, a new bricks company near Thota- Moli in Maseru.

The driver of the truck, as said by the management tried to trick the officials at Loti Brick using a pretext that he wanted to establish a flower bed using the soil found at the Loti Brick premises.

The management emphasised that one senior official became very suspicious so much that when the truck driver left he followed him to see his destination. One of the officials was therefore ordered to tail him.

The truck driver by the name of Thabiso Mphofu drove straight to Unibrick to unload and Loti Brick official was denied entrance into Unibrick premises by the management and was denied a chance to lodge a formal complaint.

As regards relationship between Loti Brick and Truck owner, the management did not hesitate saying; "One hopes he is not in a position to do the same to other organisations which have engaged his transport services. His truck has since been released from Loti Brick to continue its honourable job at Unibrick." management sarcastically pointed out."

The plaintiff denies that he stole clay from the first defendant. He denies that he off-loaded any clay at the premises of Unibrick. He felt badly hurt by the allegations stated in the article and felt that the defendants had destroyed his business and everything. He still owns the trucks but his former customers and other people no longer hire them. The trucks used to give him an income of between M30,000-00 and M40,000-00 per month.

Before this incident his neighbours regarded him as a respectable man and he rendered services to him. They now regard him as a thief. His relatives took this matter as badly as he did. The story that he stole clay from Loti Brick was reported to the second defendant by one Mr. Mphatsoe who is a manager of the first defendant.

The plaintiff alleges that by reason of the defamatory words aforesaid he has suffered damages in his fair name, fame and reputation and has been exposed to contempt and in all has suffered damages in the sum of M100,000-00.

By reason of the defamatory words aforesaid plaintiff has suffered and\or likely to suffer the loss of his business and in all he has and\or is likely to suffer damages in the sum of M50,000-00.

The second defendant caused to be printed and published in The Mirror, and the third defendant printed the aforesaid unlawful, wrongful and defamatory words of and concerning the plaintiff.

I have formed the opinion that as far as the special damages are concerned the plaintiff has failed to prove them convincingly. As a businessman he is supposed to issue receipts when money is paid to him. His former customers, namely M&C, the first defendant are so sophisticated that they could never part with money without being given a receipt to enable them to balance their books of account. The plaintiff ought to have produced as evidence before this Court some receipts covering at least one month as proof that he was paid such monies.

As far as the general damages are concerned it seems to me that the plaintiff has proved publication and that the words are defamatory *pe se*. The plaintiff was referred to by name in the aforesaid publication.

In *Skinner v. Shaprio*, 1924 W.L.D. 157 at p. 167 Krause, J. summarizes the chief factors to be taken to account:

"The amount of damages is entirely to the discretion of the court. Such discretion, however, is exercised on reasonable and not arbitrary principles. One is entitled to have regard to the character of the defamatory words, their falseness and the malice displayed by the defendant; the rank and position of the parties in society, the special relationship which existed between them, the persons to whom the defamatory words were published and the place, time and mode of publication; the continuance of the circulation of the defamatory words, the tardiness, inadequacy or absence of any apology. The court is also entitled to consider the general conduct of the defendant, from the date of the defamation; and the events leading up to it, down to and including his demeanour at the trial and the nature of his defence."

In the present case the defendants have not defended the matter in any way. The return of service shows that they were all served. The defamatory words were published in a newspaper called *The Mirror* which had a fairly good circulation here in Maseru and the surrounding townships where the plaintiff lives. It is mainly intended for the English speaking members of the community. The plaintiff may be well known by the members of the community in his area of Maseru. The defendants have not tendered any apology.

In the result judgment is entered for plaintiff for the sum

of M30,000-00 as general damages.

Regarding special damages absolution from the instance is ordered.

Defendants shall pay costs of suit.


J.L. KHEOLA
JUDGE

14th March, 1994.

For Plaintiff - Mr. K.T. Khauee.
For Respondents -