

CIV/T/441/2009

IN THE HIGH COURT OF LESOTHO

In the matter between:

BASI MOTLAMELLE

Plaintiff

vs

METCASH (PTY) LTD (MAPUTSOE)

Defendant

Coram: Hon. Hlajoane J

Date Hearing: 22nd March, 2012.

Date of Judgment: 11th June, 2012.

Summary

Defamation – What is?- Claim for damages – Pleadings having been closed – counsel for defendant having tried to locate his client, but all in vain – Withdrawal of counsel – Defendant having been served in person by fax mail – Judgment granted by default – Court exercising its discretion in awarding damages.

- [1] Plaintiff has claimed an amount of M1,500.000.00 for damages for defamation against the defendant.
- [2] The facts of the case being that plaintiff was former employee of the defendant having joined defendant's work since 13th February, 1980 till sometime in 2009 when he was suspended.
- [3] Plaintiff had been rising up the ranks since he was first employed at the receiving department till when he became the manager of defendant's big store in Maputsoe.
- [4] Plaintiff said they were visited by auditors on the 16th March 2009 from Bloemfontein and Gauteng. They inspected the cash office when it was discovered that M169, 669.00 was missing. It was because of this discovery that plaintiff claimed to have publicly been referred to as the person who had stolen the missing money.
- [5] After the pleadings were closed, a pre-trial conference was held where issues for determination were identified. The date for hearing of the matter was duly allocated.
- [6] On the 19th August, 2011 when the matter was supposed to proceed plaintiff's counsel intimated that his key witness was not present and asked to a postponement. He tendered wasted costs for the day.

- [7] On the next hearing date counsel for the defendant had withdrawn from the matter as client could no longer be traced. Plaintiff's counsel wanted to take judgment by default but the Court could not allow him but asked him to serve the defendant in person.
- [8] The matter was postponed to a later date to allow service of notice of set down on the defendant in person. The matter then proceeded by default as defendant did not show up despite service at his address by fax mail.
- [9] Plaintiff then took a witness stand to lead evidence. His evidence in a nutshell being that he was publicly referred to as a thief by one of the defendants' senior officers, Mr Hennan Coetze. It was said that the missing money had been taken by him.
- [10] Plaintiff's witness also gave her evidence confirming that plaintiff was falsely being labeled as the person who stole money from the business. She further showed that the said Koetze even tried to solicit her support to falsely implicate plaintiff as the person who stole that money. The witness even showed that management knew that she was responsible in the section where the money went missing. She was even suspended.

[11] Looking at the definition of defamation from the book entitled “**The Law of Defamation in South Africa**¹”, said in the following words, that it is:

“The unlawful, intentional publication of defamatory matter (by words or conduct) referring to the plaintiff which causes his reputation to be impaired.”

[12] Plaintiff has shown in his evidence that he denied any knowledge of the missing money, but that the management insisted that he must have taken the money in order to pay for a deposit of an expensive car he had just bought. The management even wanted the lady who worked with the plaintiff to falsely implicate plaintiff even when she had shown that plaintiff knew nothing. She even said if there was anyone to be asked was herself as the person who worked in the department where the money went missing.

[13] That lady even gave evidence in support of plaintiff’s case. Her evidence went further to show that it was not only herself and plaintiff who came to know that plaintiff was accused of stealing money from his workplace, but also other workers at the same place as they were even gossiping about it.

[14] The Court thus found out that the words about plaintiff by defendant through its management were defamatory. Plaintiff had

¹ By J.M. Burchell page 35

been referred to as a thief despite evidence to the contrary. There was publication of such words as it was not only plaintiff and his witness who came to know about them but also other workers at the place of work.

[15] There must have been the necessary intention for the words to qualify as defamatory because the defendant came to know of the truth about the money but still insisted on calling or labeling plaintiff a thief despite the explanation from the person who actually worked in the relevant department whose explanation was exonerating the plaintiff.

[16] As rightly conceded by counsel for plaintiff the question of assessing damages in similar matters can often be very difficult, but each case to be treated on its own merits. It remains in the Court's discretion to decide the issue of quantum.

[17] As shown earlier on the defendant failed to make his appearance despite service. His counsel even had to withdraw from the case as defendant showed no interest to have the matter heard with him in attendance.

[18] Plaintiff has asked for an award of M1,500,000.00 (one and half million maluti) for damages. Because defendant has failed to make his appearance despite service, judgment has to be granted by default. But even there, since the Court is left with discretion to

exercise on “reasonable and not arbitrary principles,” **Skinner v Shapiro**² reference will be made on past decisions on similar cases.

[19] The sense of what is just under the circumstances of this case calls for the granting of default judgment in the sum of M80,000.00 (eighty thousand maluti) with costs.

A. M. HLAJOANE
JUDGE

For Plaintiff: Mr Nathane

For Defendant: In Person

² 1924 (1) WLD 157 at 167