REPUBLIC OF NAMIBIA

RULING ON APPLICATIONS FOR ABSOLUTION FROM THE INSTANCE

CASE NO. I 2615/2013

In the matter between:

LOTHAR BEDNAREK	**1ST PLAINTIFF**
EVA MADGOLNA BEDNAREK	**2ND PLAINTIFF**
TANJA BEDNAREK	**3RD PLAINTIFF**

And

MINE HANNAM	**1ST DEFENDANT**
KARIN VIVIERS	**2ND DEFENDANT**

Neutral citation: *Bednarek & Others v Hannam & Another (I 2615/2013) [2016] NAHCMD 12 (03 February 2016)*

CORAM: MASUKU J

Heard: 7, 8, and 17 September 2015

Delivered: 03 February 2016

Flynote: **PRACTICE –** Application for absolution from the instance – applicable principles revisited. **DELICT –** Defamation – meaning and elements – defences – public interest, privilege, truthfulness.

Summary: The 1st and 2nd plaintiffs instituted two claims against the defendants for defamation. The first claim arose from the contents of an e-mail authored by the 1st defendant. The 1st defendant applied for absolution from the instance on the grounds that the said statement was not defamatory either in the primary or secondary sense. *Held* – that applications for absolution from the instance are not granted when there is evidence upon which a court, acting reasonably cannot find for the plaintiff. *Held* – the contents of the e-mail are not defamatory in either the primary or secondary sense. Application for absolution granted with costs. In respect of the second claim, based on words allegedly defamatory of all the plaintiffs and allegedly uttered by the 2nd defendant, the court found that the words, applying the standard of a reasonable person, were *prima facie* defamatory of the plaintiffs and that the 2nd defendant can only advance the defences of truth and public benefit and privilege once she takes the witness' stand. *Held* that there was, at the close of the plaintiffs' case evidence, on which the court, acting carefully, could find for the plaintiff. The application for absolution from the instance refused with costs.

ORDER

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1. The application for absolution from the instance in relation to the first claim is hereby granted with costs.
2. The application for absolution from the instance in relation to the second claim is dismissed with costs.
3. The second defendant is put to her defence in relation to claim 2 and the court shall give directives regarding the continuance of the trial in respect of

the second claim in consultation with the parties' representatives immediately after delivery of the order.

RULING ON APPLICATIONS FOR ABSOLUTION FROM THE INSTANCE

MASUKU J;

[1] The issue presently due for determination is whether two applications for absolution from the instance moved on behalf of the defendants herein should be granted.

[2] A brief history of the facts giving rise to the issue for determination is necessary to chronicle. The plaintiffs are members of one family. The first and second plaintiffs are husband and wife whereas the third plaintiff is their daughter, who is a major spinster. The plaintiffs and the 1st defendant share a common interest which gives rise to the present *lis.* All the parties, save the 2nd defendant, are owners of residential units at an establishment situated along Nelson Mandela Avenue in Windhoek known as Hermelin Hof Complex, (the 'Complex'). The 2nd defendant is an adult female employed as an Estate Agent and who was at the time the claims arose involved in dealing with potential clients who were interested in taking up residence at the Complex.

[3] At issue in the present proceedings and central to the issue for determination in the first claim is an email dated 6 March 2013 that was authored by the 1st defendant Ms. Mine Hannam and copied to the some members of the management of Complex. The email, which shall be reproduced in due course, complained about the distribution of water required for watering the common garden within the Complex and which the 1st and 2nd plaintiffs claim is defamatory of each one of them.

[4] The first claim was launched by the 1st and 2nd plaintiffs against the 1st defendant claiming payment of an amount of N$300 000 each, interest and costs, and on the

grounds that the contents of the email, which were addressed and copied to certain persons within the management structure of the Complex were defamatory of the said plaintiffs in respects that shall be particularized in due course.

[5] The second claim is by all the plaintiffs against 2nd defendant regarding words allegedly uttered by the 2nd defendant to a Ms. Minnette Brink of and concerning all the plaintiffs in or around 2012 and/or 2013 and which words are alleged to have been *per se* defamatory of all the plaintiffs and served to impair the plaintiffs in their good names and reputations and further injured their feelings and dignity. In this claim, the plaintiffs claim payment of an amount of N$300 000, interest and costs.

[6] During the trial, all the plaintiffs testified and further called Ms. Brink to also testify in respect of the second claim. All the witnesses were cross-examined extensively on behalf of the defendants. At the close of the case for the plaintiffs, an application for absolution from the instance was moved in respect of both defendants and in respect of both claims. Needless to say, there was no concession made by the plaintiffs on either application for absolution from the instance.

[7] It is imperative at this juncture, to briefly set out the relevant law applicable to such applications. The formulation, which has been long accepted is to be found in *Gordon Lloyd Page & Associates v Rivera and Another*[1] and is couched in the following terms:

> 'The test for absolution to be applied by a trial court at the end of a plaintiff's case was formulated in *Claude Neon Lights (SA) Ltd v Daniel* 1976 (4) SA 403 (A) at 409 G-H in these terms:
>
> ". . . When absolution from the instance from the instance is sought at the close of a plaintiff's case. The test to be applied is not whether the evidence led by plaintiff establishes what would finally be required to be established, but whether there is evidence upon which a Court, applying its mind reasonably to such evidence, could or might (not should, nor ought to) find for the plaintiff. . .This implies that a plaintiff has to

[1] (384/98) [2000] ZASCA 33 (31 August 2000; 2001 (1) SA 88 (SCA); [2000] 4 All SA 241 (A).

make out a *prima facie* case – in the sense that there is evidence relating to all the elements of the claim – to survive absolution because without such evidence no court could find for the plaintiff.'"

[8] The above case was cited with approval and applied in this jurisdiction in the case of *Namibia Post Limited v Maria Hiwilepo*[2] and *Nahole v Shiindi*[3]. It can, in the circumstances, be stated without fear of contradiction, that the test applied in South Africa is also applicable in this jurisdiction. I shall for that reason apply the above formulation in determining the critical poser in this matter.

THE FIRST CLAIM

[9] I intend to start with the first claim i.e. the one in relation to the email referred to earlier. The email in question reads as follows:

'Subject FW: WATERING – HERMELIN HOF

Dear Jonathan,
I would just like to bring the following to your attention:
The watering system at Hermelin Hof has been very unfairly done since November 2011. Units No. 1, 2 and 4 refuse to take part and taps at 2 and 4 are permanently locked. Now that I followed their example and finally locked mine as well, my new sealing unit was tampered with (obviously trying to remove the top – scratch marks on it) and my lock open when I got home on Monday evening. If that is not harassment, what is??? Are they trying to let me understand that they will have access to my tap in any case? What about theirs? What about communication?
My tap has been used (misused) more than anyone else's in the complex, a s per attached letters. Then Lothar Bednarek was no longer Chairman nor Trustee, his wife, who has never been one of the two, instructed the garden boy to use my tap only!! When Wiese Plumbing did repairs on 14/11/2011, breaking the waterpipe in front of my town house, my water was released with such pressure that it landed in No. 3's garden (opposite mine). It did not happen once only,

[2](I 3253/2007) [2011] NAHCMD 172 (17 June 2011).
[3] (I 220/2014) [2014] NAHCNLD 53 (03 October 2014).

but I was never informed! I have the evidence on all my municipality accounts but have never claimed anything back from the Body Corporate.
Unless a timetable gets drawn up to instruct us when it is our turn next, I will keep my tap locked and everyone else may do the same. We have a right to know what gets done on the premises in our absence and are supposed to be able to TRUST the TRUSTEES.
Regards
Mine Hannam
CRM Officer – Retail Banking
Banking Services'

[10] The email was copied to the addressee Jonathan at the administration and copied to the 1st plaintiff and to urbanus@iafrica.com.na.

[11] The plaintiffs claim that the contents of email above were *per se* defamatory, alternatively that the e-mail contains words which in the context of the email construed as a whole, are wrongful and defamatory of them. A secondary meaning is also attributed to the words used and it is alleged that readers of the email understood same to convey that the plaintiffs are untrustworthy; not worthy to serve as trustees of the Hermelin Hof body corporate; cannot be trusted with the watering of the gardens at Hermelin Hof; take advantage of the tap of the first defendant to water the gardens; the plaintiffs are dishonest; encourage the gardener to remove the cap from the water tap of the first defendant; the plaintiffs' conduct constitutes fraud, among a host of allegations levelled, to mention but a few. It was accordingly claimed that the email in question served to injure the plaintiffs in their good names and reputations and also harmed them in their feelings and dignity.

[12] As *solatium* for the alleged injuries to their feelings and dignity suffered as a result of the contents of the email as alleged above, the plaintiffs claim N$300 000 (in equal shares) and the other N$300 000 is for the injury to their good names and reputation.

[13] In her plea to this claim, the 1st defendant averred that the contents of the email were true and in the public interest. It was also averred that same were fair comment in the circumstances. It was further denied that that the contents of the email were made wrongfully and with the intention to injure the said plaintiffs in their names and reputation as alleged. The 1st defendant further pleaded that the statements were made on a privileged occasion.

[14] The first question to determine, and which is a legal question, is whether the contents of the email were *per se* defamatory. The learned authors Neethling *et al*[4] define defamation as 'the intentional infringement of another's right to his good name, or, more comprehensively, the wrongful, intentional publication of words or behavior which has the tendency to undermine his status, good name or reputation.'

[15] For such a claim to be sustained, there are certain elements that a plaintiff needs to prove, the first being publication. This refers to the defamatory statement or behavior, as the case may be, being made known or disclosed at least to a third party other than the person allegedly defamed.[5] Generally speaking, without such publication, the esteem in which a person is held by others cannot possibly be diminished. Second, it must be shown that the statement is defamatory of the plaintiff i.e. it is wrongful.

[16] In this regard, the statement must not only serve to impair the individual's good name but must also be objectively unreasonable or *contra bonos mores.* In this regard, the words complained of must in the opinion of a reasonable person of ordinary intelligence and development have the deleterious effect of subverting or denigrating a person in his or her good name and reputation, regard being had to the esteem in which he or she is held by the community.[6]

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[4] Neethling's Law of Personality, Lexis Nexis, 2nd edition, 2004 at p.131.
[5] *Ibid* at p.131.
[6] *Ibid* at p.153.

[17] In *Stephanus Unoovene v Lazarus Nangolo,*[7] Van Niekerk J adumbrated the applicable principles in the following language:

> 'It is trite that the "question whether the defendant's statement is defamatory falls to be determined objectively: the court will construe the statement, draw its own inference about the meaning and effect thereof and then assess whether it tends to lower the plaintiff 'in the estimation of right-thinking members of society generally'" (*per* Greenberg JA in *Conroy v Stewart Printing Co. Ltd* 1946 AD 1015 at 1018.'

[18] Put differently, the question is whether the court, after reading the statements or considering the behavior in question would come to the conclusion that the said statements or conduct were defamatory of the plaintiffs and capable of injuring them in their good names and reputation. In this regard, the court must adopt the test of a reasonable person of sober tastes and sensibilities, neither given to easy excitability nor too docile, for lack of a better epithet, so as to remain calm in circumstances where a reasonable person would react.

[19] To put it in graphic terms, the standard to be employed is that of a reasonable person who is neither as one operating under the energising effect or influence of steroids nor one operating as if under the lulling effect of sedatives.

[20] In the instant case, the question of whether or not publication did take place does not arise as an issue because it is an objective fact that the email in question was circulated to persons other than the plaintiffs. To this extent, I am of the considered opinion that the element of publication has been indubitably met. I did not understand Mr. Swanepoel for the defendants to argue otherwise.

[21] The main issue for consideration and decision, is whether the email, considered as a whole may be regarded as defamatory. To meet the criterion, the contents should show that the words used were calculated to inculcate hatred, disrespect, or ridicule of

[7] Case No. I 1082/08 at para [7].

the other person or induce others to be unwilling or less willing to associate with the subject of the email.[8] In this regard, the court is not to be concerned with whether the victim was personally injured by the words or conduct but rather whether, as stated previously, I whether the court is of the view that in the opinion of a reasonable person, the esteem enjoyed by the victim was adversely affected by the statement or behaviour in question.

[22] Having regard to the email, I am of the opinion that given the background of the matter and what the 1st defendant perceived, rightly or wrongly was happening at the Complex, the said defendant was lodging a complaint about what she regarded as the skewed and disproportionate usage of water for the common gardens. She felt that water from her unit was being used more while other residents resorted to locking their taps and when she followed their example of locking hers, her lock was broken. I do not find anything in the language used that can reasonably lead to a conclusion that the words used, objectively considered, were calculated to cause hatred, disrespect or ridicule to the plaintiffs.

[23] I am of the view that the words employed by the 1st defendant in her email were nothing more than the venting of frustration at the water situation in the complex and when viewed objectively, did not serve, given the entire matrix of the case, to justify the conclusion that the words used were *per se* defamatory of the plaintiffs.

[24] The plaintiffs, in the alternative, averred it would seem, that the words used were defamatory in the secondary sense and were understood to mean that the plaintiffs were dishonest; untrustworthy; act fraudulently and disguise the truth, among other accusations. At para 8, in particular, the plaintiffs allege that 'the defendant's email read as a whole, alternatively the passages quoted in paragraph 7 supra contain words which are *per se* defamatory of the plaintiffs, alternatively contain words, which in the context of the email construed as a whole, are wrongful and defamatory in that they were intended by the defendant and reasonably construed as a whole, are wrongful and

[8] *Ibid* at p.135 and the authorities referred to in the footnotes.

defamatory in that they were intended by the defendant and reasonably understood by readers and recipients of the email to mean that: . . .' (Emphasis added)

[25] I am of the opinion that the averrals in the above paragraph constitute a misconstruction of what is referred to as *innuendo.* In this regard, the words used must either be *per se* defamatory e.g. 'You are a thief' or, 'You are a prostitute'. There may yet be a situation in which words that otherwise appear in ordinary parlance or usage to be palatable, in special circumstances, which must be specifically pleaded, carry a secondary defamatory meaning.

[26] In dealing with the latter species, the learned authors Neethling *et al* say the following:[9]

> 'However, words can also have a *secondary* meaning, that is, an uncommon meaning attached to them by a person with knowledge of special circumstances. From this it follows that the plaintiff can demonstrate that words which were not primarily defamatory, had a secondary meaning (a so-called *innuendo*).'

At p.139, the learned authors continue and say, 'It is important that the party relying on the *innuendo* sets out clearly in his pleadings both the secondary meaning of the words and the particular circumstances supporting the meaning. Like the primary meaning, the secondary meaning of the words must be determined objectively by applying the reasonable person test.'

[27] A reading of the plaintiffs' particulars of claim quoted above shows that whereas the secondary meanings are averred, there are, however, no particular circumstances are pleaded which support the defamatory meanings alleged. It would appear that it is alleged that it is exclusively from the contents of the email read as a whole that it can be deduced that a secondary meaning to what may otherwise be regarded as innocent words used by the 1st defendant exists.

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[9] *Ibid* at p 138.

[28] In view of the foregoing, I am of the considered opinion that no case is made out for the secondary meaning and from my reading of the evidence of both plaintiffs in this claim, no case was made out for an *innuendo* properly so called. In this regard, I am of the view that the application for absolution from the instance is meritorious and it is accordingly granted. The plaintiffs may have well been irritated by the contents of the email subjectively speaking, but that is not the standard employed in granting such claims.

[29] I should mention *en passant* that the words at the bottom of the email to the effect that the residents of Hermenin Hof should 'be able to TRUST the TRUSTEES' may, if read in isolation, appear to be defamatory, suggesting that the trustees are untrustworthy. In my view, that is not the case when read in the context of the email as a whole, particularly the sentence preceding the said words where the 1st defendant stated that they should as residents be kept apprised of what happens in the Complex and should therefore be able to trust the trustees. In my view, the reference to trust is not used in a manner that suggests or implies that the trustees are untrustworthy.

Privilege

[30] In the event that I may be incorrect in my conclusions on the above defamatory nature of the contents of the e-mail in question, I find it proper to briefly consider the defence raised by the 1st defendant in relation to the first claim. The defence put up both in the plea and in cross-examination was that of privilege. There is a plethora of case law regarding the circumstances in which this defence applies. I need not reinvent the wheel in this regard. Schimming-Chase AJ in *Dr. Rihupisa Justus Kandando and Another v Namibia Medical Care*[10] dealt with the defence mentioned in the following terms, after referring to the judgment of Corbett JA (as he then was) in *Borgin v De Villiers:*[11]

[10] (I 2047/2010) [2013] NAHCMD 86 (4 April 2013).
[11] 1980 (3) SA 556 (A) at 577.

'The particular category of privilege which . . . would apply in this case would be that which arises when a statement is published by one person in the discharge of a duty or interest or the protection of a legitimate interest to another person who has a similar duty or interest to receive it. . . . The test is an objective one. The Court must judge the situation by the standard of the ordinary reasonable man, having regard to the relationship of the parties and the surrounding circumstances. The question is, did the circumstances in the eyes of a reasonable man create a duty or interest which entitled the party sued to speak in the way in which he did? And in answering this question, the Court is guided by the criteria as to whether public policy justifies the publication and requires that it be found a lawful one.'

[31] My learned Sister continued and stated the correct approach in the following terms at para [54] of the cyclostyled judgment:

'Thus in determining whether the occasion may be so regarded, the court will objectively (with the standard of the reasonable person in mind) consider all the circumstances under which the statement was made, such as the contents of thereof, the occasion at which it was made and the relationship between the parties. The courts in this regard have recognized that the defence applies where the statement has been made (a) in the discharge of a legal, social or moral duty to persons having a reciprocal duty or interest to receive it, and (b) in the protection or furtherance of an interest to a person who has a common or corresponding duty or interest to receive it, and the statement was relevant to the matter under discussion on that occasion. These grounds, founded upon public policy, are for that reason not limited and may be extended whenever the dictates of public and legal policy so require, the boundaries of which fall to be determined by applying the general criterion of reasonableness.' See also *Alexis Pietersen-Diergaardt v Pieter Hendrick Fischer*[12] and *Rauha Amwele v AlinaNdeyapo Amunyela-Namukwambi.*[13]

[32] The learned authors Neethling *et al* (*op cit*)[14] state that this defence is divided into two, namely absolute privilege and qualified privilege. The former, the learned authors posit, applies in circumstances where the privilege is arrogated by statute, for

[12] (CA 68/2007) [2011]NAHC 264 (14 September 2011).
[13] (I 1218/2011) [2012] NAHC 77 (7 March 2012).
[14] At p.145-6.

instance to members of cabinet and Members of Parliament who have absolute privilege in respect of defamatory matter uttered in Parliament or in any of the committees on Parliament. The other is relative or qualified privilege and it includes the one raised by the 1st defendant i.e.in discharge of a duty or the furtherance of an interest.

[33] Crucially, the learned authors say the following which may be considered in addition to the enlightening treatise by Schimming-Chase AJ:

'Hence, in the opinion of the reasonable man, was there a duty or interest both to communicate and to be informed of the defamatory words or behaviour? Obviously the application of this criterion depends on the facts of each particular case. Nevertheless, the following factors can play a role here: the existence of a *particular relationship* between the parties; the fact that the information was provided *confidentially on request* to someone with a legitimate interest therein; and the evident *seriousness, importance* and *urgency* of the issue in respect of which the defamatory charge was made. If it is proved that both parties had a corresponding duty or interest (that is, that a privileged occasion existed), then the defendant must further prove that he acted within the scope of the privilege. To do this he must prove that the defamatory assertions were *relevant to or reasonably connected with* the discharge of the duty or the furtherance of the interest' (Underlining only added).

[34] I am prepared to find for the 1st defendant that in the circumstances, the qualified privilege has been established but that is not the end of the matter. In the light of the underlined portion above, it would appear that establishing the privileged occasion exists is not the end of the enquiry as the defendant has the onus to prove in addition that the defamatory assertions were relevant or reasonably connected with the discharge of the duty. This, to my mind suggests that some evidence must be led by the defendant in order to show that the defence should avail him. For that reason, it would seem to me, this is an issue that cannot be properly dealt with at the absolution stage conclusively in my considered view.

[35] In the light of my findings made earlier that the contents of the email in question are not, properly considered defamatory in nature or content, I am of the view that there is no need to belabour the issue any further by considering the other defences raised by the 1st defendant in this matter. It is accordingly my view that the application for absolution from the instance is in respect of this claim good and it is therefore sustained.

SECOND CLAIM

[36] In the second claim, all the plaintiffs claim from the 2nd defendant an amount of N$300 000 for allegedly damaging each of them in their good names and reputations. The claim is predicated on words allegedly uttered by the 2nd defendant to one Ms. Minnette Brink in or about 2012 or 2013 of and concerning the plaintiffs. It is alleged that the 2nd defendant told Ms. Brink that she has to be careful of the 3rd plaintiff as she will interfere in all Ms. Brink's business if she can; all the plaintiffs are unpleasant people and make life unpleasant for the other residents at the Complex; that the 3rd plaintiff had been warned by Eike's lawyers, (an owner of one of the units) in the past and that the 3rd plaintiff is known for walking around the complex in a drunken state and generating a lot of noise in the process. The said words were alleged to be *per se* defamatory of the plaintiffs, alternatively, that there was a secondary meaning attachable to them.

[37] Ms. Brink was called as a witness by the plaintiffs. She confirmed under oath that she sent an email to the 3rd plaintiff. The email in question dated 12 March 2013 and was authored by her addressed to the 3rd plaintiff. In it, she recorded the allegations mentioned in the immediately foregoing paragraph. In it, Ms. Brink stated that she was very upset to hear the 2nd defendant make those allegations and envisaged difficult times ahead only to realize that the allegations were wide off the mark and were untrue both of the 3rd plaintiff and her parents who were all good to her.

[38] In the application for absolution from the instance, the 2nd defendant has taken the point that the 1st and 2nd plaintiffs should be non-suited because the alleged offensive statement that 'you and your mother and the rest are very unpleasant people that make life very difficult for everybody', there was no other reference to the 1st and 2nd plaintiffs.

[39] I am of the considered view that the words used of and concerning the plaintiffs that they were unpleasant, difficult and troublesome are defamatory within the meaning I have alluded to in respect of the first claim. Any reasonable person, would in my judgment take the view that the words used were indeed meant to ridicule the plaintiffs and lower them in the estimation of an ordinary person. The fact that there was only one reference to the 1st and 2nd plaintiffs does not *per se* mean that the words were not defamatory. In my view, a court, properly directed and acting carefully, cannot, on the evidence grant an application for absolution from the instance as there is *prima facie* evidence on which a court may find for the plaintiffs.

[40] The further argument made on behalf of the 2nd defendant was that the defence of privilege, which I have discussed above, also applies in the present matter. I can dispose of that argument by maintaining the same stance I did in the earlier claim. The question is whether there is no evidence on which a court, acting carefully may find for the plaintiff? I am of the considered view that there is such evidence. As indicated earlier, there is also the consideration that once the defence is established, the defendant still has an onus to prove that he or she acted within the scope of the privilege.[15] To demonstrate this, it is my view that evidence to that effect may be necessary and may not be assumed by the court at this stage as to its nature, character and quality. I would, for that reason, disincline towards upholding the application at this stage.

[41] It would appear to me also that the other defences raised by the 2nd defendant, including that of public benefit, truthfulness, fair comment as well as that the 2nd

[15] Neethling *et al* at p. 148.

defendant, as an estate agent was in duty bound by the dictates of her trade to give truthful information to a prospective client cannot be properly settled at this stage of absolution. To demonstrate this, I will quote from the very heads of argument of the 2nd defendant[16], where it is stated,

'In order to rebut the presumption of wrongfulness, a defendant may show that the statement was true and that it was in the public benefit for it to be made; or that the statement constituted fair comment; or that the statement was made on a privileged occasion.'

[42] I am of the considered opinion that these are matters, which may not be properly decided by the court at this midway stage as it were, based solely on the cross-examination of the plaintiffs and their witnesses. It may and is in the instant case, necessary to have the defendants canvass evidence to prove the defences as, 'a plaintiff who proves that according to the reasonable person test, the publication is defamatory and refers to him, provides *prima facie* proof of wrongfulness. A presumption of wrongfulness then arises and the *onus* is on the defendant to rebut it.' He may do this by proving the existence of a ground of justification (such as privilege, fair comment or truth and the public interest) for his conduct.'[17]

[43] In view of the foregoing, I am of the considered opinion that in view of the plaintiffs having shown that the allegations made by the 2nd defendant were *prima facie* defamatory of them, it is now incumbent upon the 2nd defendant to prove the sustainability of the defences she has canvassed in her plea. There is in my considered view *prima facie* evidence upon which the court may find for the plaintiff at this stage and I accordingly come to the conclusion that this is a proper case in which the application for absolution from the instance should be refused.

[44] In the premises, I issue the following order:

1. The application for absolution from the instance in respect of claim 1 is granted with costs.

[16] At page 6 para 11 on Wrongfulness.
[17] Neethling (*op cit*) at p 143 to 144.

2. The application for absolution from the instance in relation to claim 2 is refused and the 2nd defendant is ordered to pay the costs thereof.
3. The second defendant is put to her defence in relation to claim 2 and court shall give directives regarding the continuance of the trial in respect of the second claim in consultation with the parties' representatives immediately after delivery of this order.

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TS Masuku

Judge

APPEARANCES:

PLAINTIFFS:	M. Petherbridge Instructed by Petherbridge Law Chambers
DEFENDANTS:	P. Swanepoel Instructed by Phillip Swanepoel Legal Practitioners