

REPUBLIC OF NAMIBIA



HIGH COURT OF NAMIBIA MAIN DIVISION, WINDHOEK

JUDGMENT

Case No: HC-MD-CIV-ACT-DEL-2019/01211

In the matter between:

DR BERIT DAVID PLATT

PLAINTIFF

and

ARNOLDUS APOLS

DEFENDANT

Neutral citation: *Platt v Apols* (HC-MD-CIV-ACT-DEL-2019/01211) [2021] NAHCMD 143 (26 March 2021)

CORAM: **NDAUENDAPO J**

Heard: 20 November 2020

Delivered: **26 March 2021**

Reasons: **1 April 2021**

Flynote: Defamation - What amounts to - Facebook post that plaintiff a Medical Doctor ordered patient to be pushed out of his practice - He is arrogant and

disrespectful towards patients – Plea - fair comment - truth in public interest - No evidence adduced to sustain the plea - Defamation proven.

Summary: In his particulars of claim for damages against the defendant for an alleged defamation posted on Facebook, the plaintiff alleges that the defendant had wrongfully and maliciously posted the following words on Facebook: ‘a medical Dr. insults is (sic) clients, ordering security guard to push clients out of your practice... insulting an old woman’, that he is arrogance (sic) and lack respect towards your clients. ‘The said words, in the context of the article, are wrongful and defamatory of plaintiff in that they were intended to convey and were understood by readers of the post that the plaintiff, a medical doctor, is of questionable reputation, is abusive/aggressive towards his patients and or elderly people, lacks integrity and honesty, and without any moral fiber.’

In his plea the defendant admits that he posted the statements on Facebook but claims that it was fair comment and truth in the public benefit or interest. The Court found that there was no truth in the statement posted on Facebook. To state in the Facebook post that the plaintiff ‘instructed the security guard to push out his patient out of his practice’ is arrogant and disrespectful towards his patients for someone who is a medical doctor, imputes to him that he lacks the qualities that are required to be a medical doctor. Patients go to doctors to be treated and to be cared for, not to be pushed out and to be disrespected’. The post suggests that he lacks integrity and conducts himself in a manner contrary to the Hippocratic oath (The Hippocratic oath is an oath taken by medical doctors and suggest that the physician and his assistants should not cause physical or moral harm to a patient) and the *primum nil nocere* (first do no harm) principle’). This ‘would indeed tend to lower him in the estimation of people straddling all sectors of our society.’ This is defamatory *per se* and the defences raised are meritless.

Held that the defences pleaded are meritless.

Held further that the words used in the Facebook post had been used without any truth and that constituted animus injuriandi.

Held further that the plaintiff was entitled to the prayers sought.

ORDER

1. The plaintiff's claim succeeds.
2. The defendant is ordered to pay an amount of N\$20 000 to the plaintiff within thirty calendar days from today's date. Such payment to be made to the plaintiff's legal practitioners trust account.
3. The defendant is ordered to remove the Facebook post within 24 hours from all media platforms including deleting it from his Facebook account.
4. The defendant is ordered, within 24 hours, to publish on Facebook(Mariental page) from his Facebook account, the following apology: On 8 November 2018, I published a post on Facebook(Mariental page) which states that: 'Dr. Plaat van Mariental...since when does a medical Dr. Insult its clients, ordering security to push clients out of your practice... Insulting, an old women that could've been your mother, sit daai foken vrou uit my kantoor) after you gave an injection which she said it is strong and was making her dizzy, that's way too disrespectful for man...goddamnit man, that was my mother for you... I've heard about your arrogance and lack of respect towards your clients... And a lot of people can and will confirm that... For you and your security watch this space...' **I unconditionally withdraw these allegations and apologise for making it as false.**
5. The defendant is ordered to pay the costs of the plaintiff, such costs to include the costs of one instructed counsel.

JUDGMENT

NDAUENDAPO, J

Introduction

[1] This is an action for defamation where the plaintiff, a medical doctor, sues the defendant for a defamatory statement/or post which appeared on Facebook (Mariental page) on 8 November 2018. In the Facebook post the defendant makes allegations against the plaintiff, which according to the plaintiff are defamatory to him. He is claiming damages in the amount of N\$100 000.

Pleadings

[2] In the particulars of claim the plaintiff alleges that on or about the 6th of November 2018 the defendant, at Mariental and on his social media platform, posted a statement and inserted that he was “feeling angry with Meisie Skrywer”. A copy of the post on social media and more specifically Facebook was posted/published for every person, not within the borders of the Republic of Namibia, but worldwide. A copy of the article is annexed hereto marked as Annexures “BDP1”.

[3] The said post is a post on a social media platform, used widely in the Republic of Namibia and widely read by the general public as well as through the internet worldwide.

[4] It is further alleged that the said article/post on social media and more specific “Facebook” was understood by the general public and it was intended by the defendant to mean that plaintiff is a person without any integrity as a medical practitioner and of

questionable reputation, abusive/aggressive behavior towards his patients, lacks integrity and honesty, and without any moral fiber.

[5] The said words, in the context of the article, are wrongful and defamatory of plaintiff in that they were intended to convey and were understood by readers of the post that the plaintiff, a medical doctor of questionable reputation, abusive/aggressive behavior towards his patients and or elderly people, lacks integrity and honesty, and is without any moral fiber in the following respects:

5.1 Plaintiff, is a person who insults his clients (patients) by ordering the security guard to push clients out of his practice, thus being abusive towards the patients in that he mistreated her.

5.2 Plaintiff has no respect for any person/patient by insulting an old woman which impugn that he (plaintiff) mistreats old people who are his patients.

5.3 Plaintiff was told to have insulted the patient and chased her out of the consultancy rooms.

5.4 Plaintiff and his security guard did allegedly assault the patient and used foul and abusive language towards the patient by saying 'sit daai fokken vrou uit my kantoor.' Loosely translated as 'put that fucking woman out of my office.'

5.5 Plaintiff was allegedly disrespectful towards the woman who could have been his mother.

5.6 Plaintiff was allegedly known for being arrogant towards his patients and shows a lack of respect towards his patients/clients.

5.7 Plaintiff also received a last line in the post which said 'For you and your security watch this space...'

The plaintiff is claiming an amount of N\$ N\$100 000 in damages.

[6] Defendant's plea

6.1 The defendant denies the allegations. In amplification of the denial, defendant pleads that:

6.1.1 The statement was made because the plaintiff mistreated the defendant's mother, a pensioner, who was his patient at the time, in an inhuman and degrading manner.

6.1.2 The defendant's mother simply asked the plaintiff why she was feeling dizzy after plaintiff injected her. The plaintiff replied harshly that he is a doctor and defendant's mother has no standing to ask her.

6.1.3 The plaintiff further ordered the security guard to 'get this fucking woman out of my office.' The security guard then forcefully removed the defendant's mother from the plaintiff's practice.

6.1.4 The defendant's comment is fair and reasonable under the circumstances as it is meant to inform the public that the plaintiff's conduct was not acceptable among the members of the public, whom, some of them, are plaintiff's clients.

6.1.5 The comment was also made in the public interest and for public benefit since the public has the right to know the kind of service the plaintiff gives to his clients, such as defendant's mother.

6.1.6 The comment was based on the true facts which formed the opinion of the defendant, it is relevant and related to the matter of public interest. The comment was therefore justifiable and reasonable under the circumstances. The post intends to

inform the public on what transpired and in the same vein dissuade the plaintiff from making the same or similar conduct towards patients.

6.1.7 The defendant comments an expression of anger and frustration towards the plaintiff for ill treatment of his mother. Under those circumstances, the defendant's constitutional right and freedom of expression cannot be trampled by plaintiff's feeling of displeasure.

6.1.8 The defendant's post on Facebook was not intended to mean and to be understood as alleged by the plaintiff.'

Plaintiff's case

[7] The plaintiff testified that he obtained a MBCHB degree from the University of Stellenbosch in 2012. He completed his internship at the Central state hospital, Windhoek. He is currently employed by the Ministry of Health and Social services as the chief medical officer for the Hardap region. He also owns a private medical practice in Mariental.

[8] On 6 November 2018, Ms. Anna Skrywer, the patient, was examined by him at his practice in his consulting room. He established that she had general body pain. He instructed her to go the nurse section for a simple routine anti-inflammatory injection. He told her that she would get a prescription for medication after the procedure. She requested a sick leave certificate, and he told her that she would not get one as the pain did not warrant her to be booked off sick. She then argued with him demanding for a sick leave certificate. He refused and told her to proceed to the nurse's station. She proceeded to the nurse station.

[9] He testified that this was the first time the patient had ever come to his practice. The practice was extremely busy on this specific day. In order to move the flow and screening of patients, he checked in on Ms. Skrywer at the nurse station.

She was asked to proceed to the reception and make room for other patients. Ms. Skrywer told him that she did not like him or his nurse. She became loud and aggressive in her behavior and language. She proceeded to argue and insult the staff at the reception. She refused to leave the practice and directed her verbal assaults towards the whole staff at reception. She then threatened that her husband would come and beat them all up at the practice. The practice security was instructed to ask her to leave. She became involved in a verbal altercation with him as well. They called Mariental security, who arrived at the practice.

[10] A few minutes thereafter, Mr. Andrew Skrywer, the husband, arrived at the practice. He tried to forcefully barge into the practice, but was restrained by the security officer at the door. The police also arrived at the scene. They came and interviewed him about the incident at the practice. He showed them the CCTV footage of the incident. He testified that Ms. Skrywer's claims that she was assaulted by the practice staff and unable to walk due to dizziness is false.

[11] The police requested the Skrywers to leave the practice and they obliged. On 6 November 2018 a Facebook post was posted by the defendant, Sydney Apols on a local Mariental Page. The post went on a rant about the incident that occurred at the practice. The post came under his attention via patients of the practice and family and colleagues. The Facebook post reads as follows: 'Dr. Plaat van Mariental...since when does a medical Dr. Insult its clients, ordering security to push clients out of your practice... Insulting, an old women that could've been your mother, sit daai foken vrou uit my kantoor) after you gave an injection which she said it is strong and was making her dizzy, that's way too disrespectful for man...gotdamnit man, that was my mother for you... I've heard about your arrogance and lack of respect towards your clients... And a lot of people can and will confirm that... For you and your security watch this space...'

30 comments/38 shares

[12] The post called him out in public and made accusations towards him as a professional medical doctor. There were threats on my life with Okapi knives towards

him and his security guard. He testified that the defendant was never present during the whole incident on 5 November 2018. He posted information of which he had no personal knowledge of.

[13] He testified that his name and reputation, as a medical doctor and chief medical officer for the Hardap region was defamed by the Facebook post. Even his colleagues in the profession phoned him to express their concern about the post. He testified that he noticed a decline in the number of patients who visited his practice after the post and ascribed the drop to the Facebook posts.

[14] Ms. Platt, the office administrator at the practice of the plaintiff, testified that, Ms. Skrywer, was given an injection by the practice nurse, Ms. Links, whereafter the patient started making remarks that the injection was painful and kept arguing with the nurse and the whole practice could hear that. The plaintiff who was busy with another patient had to intervene and calm the situation by asking the patient to either behave or leave the practice.

[15] The patient walked to the reception in a normal manner without any problems or hinder, got to the reception and started cursing and saying: 'I will call my husband to come and "fuck all of you up"'. The security officer told the patient to go outside to make the phone call.

[16] The husband arrived, but was not allowed into the building by the security guard. Armed response and the police arrived at the scene. She testified that the patient was not an elderly woman as stated in the Facebook post.

[17] Ms. Links testified that she is an enrolled nurse and midwife. She is employed at the practice of the plaintiff since 2016. She injected Ms. Skrywer and after the injection she said it was painful. She was not dizzy and when she went out, she said I am a bad person and she will call her husband.

[18] Mr. Vandaljka, the security guard testified that Ms. Skrywer came to the practice on the date of the incident. After she was injected by the nurse, she came out saying we are bad people and she will call her husband. The plaintiff then asked her to go to the reception to make way for other patients. She called her husband and he refused him entry.

The defendant's case

[19] Mr. Apols testified that he was not present when the incident occurred. He heard the story from his mother. He testified that he posted the post on Facebook as there was no other platform to express his views about the treatment meted out to his mother by the plaintiff. He was communicating to the public that what the plaintiff did was not the way to treat patients...During cross examination, it was put to him that 'your mother was directed out and not pushed as you claim in the Facebook post.' He testified that it was the same. By posting, the post on Facebook, his intention was that as many people of Mariental know how unprofessional the plaintiff was. When asked as to how he knows that the plaintiff was arrogant and disrespectful as he stated in the post, he said he heard that. He testified that the post was based on the truth. He testified that is the reason why he did not remove it and has no intention to do so. It is still there.

[20] Ms. Skrywer testified that on 6 November 2018 she went to the practice of the plaintiff as she fell ill. The plaintiff examined her and instructed nurse Links to inject her. Immediately after the injection she felt weak and dizzy. After that the plaintiff came in the nurse consulting room and told her to get out as there were other patients waiting. He shouted at her and asked her to get out. He ordered the security guard to 'take this fucken woman out of my office'. The security guard forcefully pushed her out of the practice. She then called her husband and her son, the defendant. She denied that she asked for a sick leave certificate as testified by the plaintiff. She also denied swearing at the plaintiff. She testified that the security guard did not touch her body.

Submissions by plaintiff

[21] Counsel argued that the Facebook post caused the public to understand that the plaintiff who is a medical doctor in Mariental, is a person without any integrity, a person of questionable reputation, abusive and aggressive towards his patients (plural), lacks honesty and is without any moral fiber.

[22] The plaintiff indicated to the court how he felt about the statement or post and also, that he was not on Facebook, but was informed by family, friends and colleagues all over the world that they have seen the post. His current patients phoned him and told him that there was a post on Facebook.

[23] Counsel argued that the law of defamation in Namibia is based on the *Actio Injuriarum* of the Roman law and to succeed in a defamation action a plaintiff must establish that the defendant published a defamatory statement concerning the plaintiff. A rebuttable presumption then arises that the publication of the statement was both wrongful and intentional (*amino injuriandi*). 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. Furthermore fair comment requires the underlying facts upon which comment is based to be true or substantially true.

[24] In this matter the Facebook post was 'of the plaintiff and concerning him' and it is clear that the reasonable man hearing or reading the utterance would be likely to apply it to the plaintiff.

[25] Counsel submitted that when reading the post/statement it is clear that the words complained of by the plaintiff, are reasonably capable of conveying to the reasonable reader a meaning which defames plaintiff.

[26] In this matter the defendant indicated during his testimony that he understood that chase and push as having the same meaning. In the matter of *Hassen v Post*

*Newspapers (Pty) Ltd*¹ it was said that evidence of how a witness understood the statement is inadmissible.

[27] Counsel submitted that the post/statement has injured and is still injuring the plaintiff in his good name (*fama*) and reputation (*dignitas*) and in his feelings and dignity.

[28] The defendant testified that his comment was fair and reasonable under the circumstances and that it is still meant to inform the public that the way the plaintiff conducts himself was and still is not acceptable amongst the members of the public, whom, some of them are the plaintiff's clients, but what he posted was not fair and reasonable, agreed counsel.

[29] Defendant testified that it was his aim as a person, representing Mariental to let all plaintiff's clients know, that plaintiff's conduct was not acceptable.

[30] Counsel argued that Article 21 deals with the fundamental freedoms and the right of freedom of speech and expression to all persons including the press and other media. This right to freedom of speech and expression, however shall be exercised subject to the law of Namibia, in so far as such law imposes reasonable restrictions on the exercise of freedom of speech and expression, which are necessary in a democratic society and are required in the interest of the sovereignty and integrity of Namibia, national security, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence.

[31] Although defendant believed that he did not defame the plaintiff, with his statement on Facebook, defendant believes that everyone should know how plaintiff treats his clients (plural) although there was no evidence to such effect.

Submissions by defendant

¹ *Hassen v Post Newspapers (Pty) Ltd* 1965 (3) 562 (W).

[32] Counsel argued that in dealing with the words or conduct complained of, the court reasoned as follows in *The Bednarek and Others v Hannam and another*:²

'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.'

[33] Counsel argued that, it is common cause that the post, as it appears, must be interpreted in its ordinary meaning from the position of an objective reasonable person with ordinary intelligence; and whether that person would regard it as it is meant to lower the plaintiff in the eyes of the right thinking members of the society.

[34] Counsel argued that, the post did not criticize the plaintiff's manner in which he delivers his medical services to his clients. That is never, nowhere in this post. The meaning and interpretation is rather accorded to the plaintiff's conduct in handling patients and never placed the plaintiff's qualifications, skills, expertise and delivery of medical services into disrepute. Had this been a case, there would be little doubt that the plaintiff's professional image is defamed.

[35] A right thinking and reasonable member of Mariental community and at large will never interpret the post that the plaintiff is less of a medical doctor. In support of that submission, the defendant started with the sentence that 'Dr. Platt van Mariental,' an expression and acknowledgment that he is a medical doctor.

[36] On that basis alone, objectively assessed, the post cannot be attributed a meaning that could lower the plaintiff's reputation as a medical doctor. Obviously, it

² *The Bednarek and Others v Hannam and another* (I 2615/2013) [2017] NAHCMD 12 (03 February 2016).

would have been different if the post reads that the plaintiff is injecting patients with wrong medications, for example. This is not a case in the instant case.

[37] It is undisputed that the plaintiff, who cried foul of the Facebook post, ordered the security guard to 'get this fucking woman out of my office'. The security guard then forcefully removed the defendant's mother from the plaintiff's medical practice.

[38] Counsel argued that, the post constituted fair comment. The defence of fair comment itself requires the underlying facts upon which the comment is based to be true or substantially true. The defence does not require absolute truth.

[39] Counsel submitted that, considering the entire post and the evidence led by Mr. and Mrs. Skrywer, it is crystal clear that what has been stated in the Facebook post is true or substantially true. The evidence led by Mr. and Mrs. Skrywer formed the basis on which the post was founded. The plaintiff was unable to controvert that the Facebook post contains no truth. It thus follows that the defendant comment is, under the circumstances, fair and reasonable as it is meant to inform the public that the plaintiff's conduct, as a medical doctor, is not acceptable among the members of the public, whom, some of them, are his clients. It thus follows that the defendant has, on the balance of probabilities, proven that the comment is fair.

[40] Counsel submitted the defense of truth and public benefit, it is well established that it is lawful to publish a defamatory statement, provided that publication is for the public benefit. There is no doubt that the post made on Facebook was not made for personal benefit but rather for public benefit in the sense that it aims to inform the public, mostly that of Mariental, about the ill-treatment of patient(s) by the plaintiff.

[41] Counsel argued that the question whether a publication is for the public benefit depends on the subject matter of the statement and the time, manner and occasion of the publication.

'44. ...the public benefit flows from making the misbehavior of the plaintiff 'known' to the public. It seems to follow from this that that which has been said must be something of which the public are ignorant. It does not seem correct to speak of 'informing' people of something of which they are already aware. The public interest lies in telling the public something of which they are ignorant, but something which is in their interest to know.' *Mohamed v Kassim*.³

[42] Moreover, the public interest and benefit lies in the fact the public has the right to know the kind of treatment (not medical treatment) the plaintiff gives to his clients, such as defendant's mother. In that way, the defendant is protecting and furthering a legitimate public interest which the community especially that of Mariental, has the right to know.

[43] Counsel argued relying on *National Media Ltd and Others v Bogoshi*,⁴ that the publication of the post on Facebook was under the circumstances reasonable and important for it to be published in the public interest. It was within the defendant's limited constitutional right and freedom of expression to inform the public about the unwelcome conduct of the plaintiff towards his clients. It is further submitted that the defendant right of expression cannot, under the circumstances of this case, be trampled by plaintiff's feeling of displeasure.

[44] Relying on *Aupindi v Shilemba and others*,⁵ where the Supreme Court stated that:

'Hearsay may be first hand, second hand or more distant. It is first hand when a witness says what he heard someone else said. It is second hand, when the witness relates what he was told someone else said and so on... it appears that the hearsay evidence is admissible and relevant where the state of mind of a person has to be proved is only firsthand hearsay evidence. As is also evident from what is stated above the evidence must also corroborate

³ *Mohamed v Kassim* 1973 (2) SA 1 (RAD).

⁴ *National Media Ltd and Others v Bogoshi* 1998 (4) SA 1196 (SCA).

⁵ *Aupindi v Shilemba and others* SA 7/2016) [2017] at para 39.

other evidence. Other evidence in this context refers to factual evidence other than further hearsay evidence relating to the relevant state of mind in issue in a particular case.’

[45] Counsel urged that, the defendant’s evidence falls within the recognized categories of admissible hearsay evidence rule as his testimony relied on what he heard from Ms. Skrywer.

Quantum

[46] Counsel argued that it is trite in defamation suits that the plaintiff must prove, on a balance of probability that he has suffered damages, the extent of such damage and what amount he should be awarded in respect thereof.

[47] Some of the factors relevant to the assessment of damages includes the nature of the words used, the circumstances in which the infringement took place, the behavior of the defendant, plaintiff’s standing in society, extent of publication, extent of plaintiff’s humiliation or distress etc.

Counsel argued that the plaintiff did not testify about the quantum, except to say that the amount of N\$100 000 was based on what his lawyer told him.

Discussion

Applicable Legal principles

[48] In *Trustco Group International Ltd and Others v Shikongo*⁶ the Supreme Court held that:

‘The law of defamation in Namibia is based on the action injuria of Roman law. To succeed in defamation action, a plaintiff must establish that the defendant published a defamatory statement concerning the plaintiff. A rebuttable presumption then arises that the

⁶ *Trustco Group International Ltd and Others v Shikongo* SA 2009 p6 para 24.

publication of the statement was both wrongful and intentional (*animo injuriandi*). 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. The list of defences is not exhaustive. If the defendant can establish any of these defences on a balance of probabilities, the defamation claim will fail.'

[49] Defamation is the wrongful and intentional publication of defamatory words or conduct to a claimant. The four requirements to prove defamation are: a. wrongfulness, b. intention, c. publication and d. the defamatory words or conduct about the claimant.⁷ Once a claimant establishes c and d., then a. and b. are automatically presumed. That is, the publication is presumed to be both wrongful and intentional, avoid triggering this presumption, and consequently, liability for defamation, a defendant must raise a defence which rebuts either the requirement of wrongfulness or intention. Constitutionally, Dr. Platt's rights to dignity and freedom (article 8) are limited by Mr. Apols' right to freedom of expression under article 21(1) (a) of the Constitution and vice versa.

[50] The test for defamation meaning is whether, in the opinion of a reasonable person, the words have the tendency to undermine, subvert, or impair a person's good name, reputation or esteem in the community.⁸ This is a two-stage inquiry.

[51] First, what is the 'natural' or 'ordinary' meaning of the statement? For this, neither the meaning which the maker of the statement intended to convey, nor the meaning given to it by the persons to whom it was published, matters. So, whether they believe it to be true, or whether they then thought less of the plaintiff are irrelevant considerations.⁹ The test is objective. How would a reasonable person of ordinary

⁷ *Khumalo v Holomisa* (CCT53/01) [2002] ZACC 12; 2002 (5) SA 401; 2002 (8) BCLR 771 (14 June 2002).

⁸ *South African Associated Newspapers Ltd and another v Yutar* 1969 (2) SA 442 (A) at 451.

⁹ *Le Roux v Dey* (Freedom of Expression Institute and Restorative Justice Centre as amici curiae) 2011 (3) SA 274 (CC) para 89.

intelligence have understood the publication? Reasonable readers are not naïve. They take into account not only what the words say, but also what they imply.¹⁰ Second, based on the statement's natural or ordinary meaning, would it tend to lower the claimant in the estimation of right-thinking members of society generally?¹¹

Law to the facts

[52] The defendant admits that he posted or published the statements on Facebook. To state in the Facebook posts that the plaintiff 'insults his clients, ordering the security guard to push out his clients out his practice' insulting an old woman, he is arrogant and disrespectful towards his patients, about someone who is a medical doctor and chief medical officer for the whole Hardpan region, imputes to him that he lacks the qualities that are required to be a medical doctor and chief medical officer. Patients go to doctors to be treated and to be cared for, not to be pushed out and to be insulted and be disrespected. The post conveys that he lacks integrity and conducts himself in a manner contrary to the Hippocratic oath¹² and the *primum nil nocere* (*first do no harm*) principle. This 'would indeed tend to lower him in the estimation of people straddling all sectors of our society.' This is defamatory *per se*. I proceed to examine the defenses raised (a) fair comment -the words: 'since when does a medical Dr. insults his clients, ordering security to push clients out of your practice. Insulting an old woman, Arrogance (sic) lack of respects towards your client.' Do those words constitute fair comment and in the public interest? Ms. Skrywer testified that she was not pushed out of the practice, but ordered to leave. The evidence that she was insulted by the plaintiff has not been proven on a balance of probabilities. The statements that he was arrogant and disrespectful towards his patients are hearsay and has not been proven. The defendant was not present when the incident occurred in the practice of the plaintiff. There was also no evidence that the plaintiff was arrogant and mistreated his patients as conveyed

¹⁰ *Le Roux v Dey* (Freedom of Expression Institute and Restorative Justice Centre as amici curiae) 2011 (3) SA 274 (CC) para 89).

¹¹ *Argus Printing and publishing Co. Ltd and others v Esselen's Estate* 1994 (2) SA 1 (A) at 21A-B.

¹² The Hippocratic oath is an oath taken by medical doctors and suggests that the physician and his assistants should not cause physical or moral harm to a patient.

in the Facebook post. In *Madiri v Minister of Safety and Security*¹³ the court said: ‘Publication of defamatory matter which is untrue or only partly true can never be in the public interest, end of story’. Under those circumstances the Facebook post did not constitute fair comments nor were they true in the public interest. The Facebook post was accordingly defamatory.

[53] Publication of the defendant’s Facebook post is widespread in social media. That is the nature of the internet. The defendant knew that the communication via Facebook would be ‘instantaneous, borderless and far-reaching.’ A person conducting an internet search of Dr. Platt’s name ‘anywhere in the world will see the post and will understand that [he] is an aggressive and arrogant person towards his patients. The Facebook post continues to circulate widely and with additional comments and innuendo, to cause immense harm and damage to Dr. Platt’s reputation for as long as it remains published without censure. The defendant testified in court that the Facebook post was not removed and that he has no intention to do so.

[54] Plaintiff asked for an amendment to his prayers for the removal of the post as he thought that it was removed by the time summons was issued. There was no objection to the application and accordingly the amendment was granted.

Quantum

[55] The plaintiff is claiming damages in the amount of N\$100 000. No evidence was tendered as to how he arrived at that amount, except to say that was on the advice of his lawyers. The factors to be taken into account when considering the quantum, were succinctly stated in *Muller v SA Associated Newspapers Ltd and Others*¹⁴ where the court held that:

‘The character and status of the plaintiff, the nature of the words used, the effect that they are calculated to have upon him, the extent of the publication, the subsequent conduct of

¹³ *Madiri v Minister of Safety and Security* 2011 (6) SA 370 at 379 (F).

¹⁴ *Muller v SA Associated Newspapers Ltd and Others* 1972(2) 589 (C) at p 595A.

the defendant and, in particular, his attempts, and the effectiveness thereof, to rectify the harm done'.

The plaintiff testified that he is a medical doctor, obtained MBCHB degrees from the University of Stellenbosch. He is currently the chief medical officer for the whole Hardpan region, other medical doctors and health professionals in the employ of the Ministry of Health and Social Services in the Hardap region report to him and look up to him for guidance and leadership. The Facebook posts is still widely circulating and causing more damage to the reputation of the plaintiff. Plaintiff testified that after the Facebook post was published, he noticed a drop in the number of patients who visited his practice. The defendant testified that the post is still on Facebook and he has no intention to remove it. Those are all weighty factors that the Court will consider in granting the appropriate relief. The defendant could have reported the plaintiff to the Health and Dental Council for Misconduct, but failed to do that.

[56] What is aggravating is the conduct of the defendant. When he testified, he was arrogant and tried to justify the post by all means. He also testified that he has no intention to remove the post despite summons being issued against him. The defendant testified that he had no other platform to raise his concern other than to report to Facebook. That is not true. He could have laid a complaint with the Medical and Dental health Council for professional misconduct against the plaintiff or with his employer. Social media such as Facebook is a powerful tool used by people such as the defendant to defame and ruin the reputation of innocent people and the only way for those aggrieved by such malicious and defamatory posts and tweets are to approach the Courts for an appropriate relief and where it is proven that such posts were defamatory, the relief must be granted. Although the plaintiff did not specifically asked for an apology in his prayers, he did testify under cross examination that he also seeks an apology. That prayer can also be granted under further and or alternative relief.

For all those reasons, I make the following order:

Order

1. The plaintiff's claim succeeds.
2. The defendant is ordered to pay an amount of N\$20 000 to the plaintiff within thirty (30) calendar days from today's date. Such payment to be made to the plaintiff's legal practitioners trust account.
3. The defendant is ordered to remove the Facebook post within 24 hours from all media platforms including deleting it from his Facebook account.
4. The defendant is ordered, within 24 hours, to publish on Facebook (Mariental page) from his Facebook account, the following apology: On 8 November 2018, I published a post on Facebook (Mariental page) which states that: 'Dr. Plaat van Mariental...since when does a medical Dr. Insult its clients, ordering security to push clients out of your practice... Insulting, an old women that could've been your mother, sit daai foken vrou uit my kantoor) after you gave an injection which she said it is strong and was making her dizzy, that's way too disrespectful for man...gotdamnit man, that was my mother for you... I've heard about your arrogance and lack of respect towards your clients... And a lot of people can and will confirm that... For you and your security watch this space...' **I unconditionally withdraw these allegations and apologize for making it as false.**
5. The defendant is ordered to pay the costs of the plaintiff, such costs to include the costs of one instructed counsel.

G N NDAUENDAPO

Judge

APPEARANCES:

FOR THE PLAINTIFF:

Ms. F. Schulz
Of Neves Legal Practitioners
Windhoek

FOR THE DEFENDANT:

Mr. T. Nanhapo
Brockhoff & Associates Legal Practitioners
Windhoek