

REPUBLIC OF NAMIBIA



HIGH COURT OF NAMIBIA MAIN DIVISION, WINDHOEK

JUDGMENT

Case No: HC-MD-CIV-ACT-DEL-2019/05338

In the matter between:

ELIZE MUTALENI ANGULA

PLAINTIFF

and

TOMMY VEUNDJA TJARONDA

DEFENDANT

Neutral citation: *Angula v Tjaronda* (HC-MD-CIV-ACT-DEL-2019/05338) [2022]
NAHCMD (25 July 2022)

Coram: USIKU, J

Heard: 31 January 2022, 01 and 03 February 2022 and 24 March
2022

Delivered: 25 July 2022

Flynote: Delict – Defamation – Claim arising from ‘tweets’ on social media – Defendant averring that the statements he made are true and that the publication was in the public interest – Court holding that statements are false and defamatory of the plaintiff – Damages awarded in favour of the plaintiff.

Summary: The plaintiff instituted action claiming damages in the amount of N\$500 000 together with ancillary relief. The defendant defended the action stating that the statements he tweeted through social media are true and were published in public interest. The court held that the statements published by the defendant are false and defamatory of the plaintiff. The court awarded damages to the plaintiff and ordered the defendant to publish a retraction and an apology.

ORDER

1. The statements made by the defendant concerning the plaintiff, as set out in addendum A to E hereto, made during the period between 25 February 2019 to 22 March 2019, are declared false and defamatory of the plaintiff.
2. The defendant is ordered to pay plaintiff the amount of N\$100 000.
3. The defendant is ordered to pay interest on the aforesaid amount at the rate of 20% per annum, calculated from the date of judgment to the date of final payment.
4. The defendant is ordered to, within ten (10) days of this order, publish the following apology on his social media platforms Twitter and Facebook (depending on where the defamatory statements were made):

‘During the period of 25 February 2019 to 22 March 2019, I published statements about Elize Angola that she was unethical, that she acted unethically, that she committed perjury, that she was reckless and that she acted maliciously and with reckless disregard for the truth as an officer of the court, that she conducted herself to mislead judicial officers for the benefit of her clients, that she acted in an unprofessional manner and that she acted untowardly. Those statements are false. I unequivocally retract those statements and unreservedly apologise for having made them. I regret any inconvenience I caused to Elize Angola. Tommy Veundja Tjaronda.’

5. The defendant is ordered to pay the costs of the plaintiff, such costs to include costs of one instructing and one instructed legal practitioner.
6. The matter is removed from the roll and regarded finalized.

JUDGMENT

USIKU, J:

Introduction:

[1] In this action, the plaintiff claims damages from the defendant, arising from publications by the defendant of alleged defamatory statements about the plaintiff. The publications occurred in the form of “tweets” by the defendant on his social medial platforms of Twitter and Facebook.

[2] In her particulars of claim, the plaintiff asks that the defendant be ordered to pay damages in the amount N\$500 000 as a *solatium* for the alleged injury to her reputation. The plaintiff also asked that the defendant be ordered to publish an unconditional retraction of the allegations.

[3] Although the defendant appeared in person at trial, he was legally represented at the time he filed his plea. In his plea, the defendant admits having caused to be published (on his Twitter and some publication on Facebook) the impugned statements. The defendant also admits that such statements are about the plaintiff. The defendant, however, denies that the impugned statements are defamatory. The defendant submits that the statements are true and that it was in the public interest to publish them.

[4] The full text of the tweets/statements published by the defendant about the plaintiff are appended to this judgment as addendum A to E.

Background

[5] Around 2015, certain immovable property was allocated to an entity named Waterberg Investments (Pty) Ltd (“Waterberg”) by the City of Windhoek. Waterberg then embarked upon a quest to solicit partners to fund a property development project on the land in question. The property was then to be transferred into a Social Purpose Vehicle. An entity named Dymotronics concluded an agreement with Waterberg in respect of that property development project. The property was finally transferred from the City of Windhoek into a Special Purpose Vehicle about November 2017.

[6] The plaintiff is the legal representative for Waterberg and was instructed to prepare certain commercial agreements between Waterberg and Dynotronics. A certain Mr Tjama Tjivikua, together with other persons, own or hold shares, in Waterberg.

[7] On and about 17 September 2018, the defendant contacted the plaintiff privately by direct message on her Twitter account seeking certain assistance. The defendant informed the plaintiff of an agreement between himself and Mr Tjivikua in terms of which the defendant had solicited partners to fund the property development project being undertaken by Waterberg. The defendant alleged to have ‘brokered’ the financing of the property development project and was, in terms of their agreement with Mr Tjivikua, entitled to be paid a commission or a consultancy fee. According to the defendant, Mr Tjivikua refused to pay the defendant and the defendant requested assistance from the plaintiff in the form of some mediation between the parties.

[8] The plaintiff informed the defendant that the property was transferred the previous year. She later informed him that Dynatronics and Waterberg are still sorting out their agreement and that Dynatronics ‘wanted to pull out but now back on the table’. The defendant confirmed that he was aware that the matter was ‘resolved through political channels and all are onboard again’.

[9] Some time thereafter, the plaintiff was instructed by Mr and Ms Tjivikua to institute interdict proceedings against the defendant relating to certain statements that the defendant posted on social media platforms as well as on other platforms concerning them. Mr and Ms Tjivikua also instituted action against the defendant for

defamation. The plaintiff acted as attorney for Mr and Ms Tjivikua in both of those proceedings.

[10] In regard to the interdict application, Ms Tjivikua deposed to a supporting affidavit, inter alia, stating that her legal practitioner (ie the plaintiff), had during the course of filing the interdict application, contacted the defendant requesting his physical address where he could accept service of the application and that the defendant responded that he is not there to make her work and life easy and that she should do as is required of her.

[11] In the same interdict application, the plaintiff deposed to a confirmatory affidavit, confirming that she had read the supporting affidavit of Ms Tjivikua and confirmed the truth and the correctness thereof insofar as it relates to her (the plaintiff). The plaintiff maintains that this is the only statement under oath which she made in respect of that matter and that the contents thereof are true.

[12] The exchange of papers in the interdict application was concluded during October 2018. During February 2019, before the interdict application was argued, the defendant started posting statements through the social media about the plaintiff. These statements are now the subject of the present matter.

The impugned statements

[13] The statements made by the defendant about the plaintiff as appears from Addendum A to E thereof allege, or suggest, that the plaintiff:

- (a) is a liar and is a lying practising attorney,
- (b) has acted unethically, maliciously and as an officer of the court,
- (c) has committed perjury,
- (d) has conducted herself in an unprofessional and untoward manner, and,
- (e) has betrayed the justice system and the oath that she took.

[14] It is common cause that the defendant does not dispute the statements he made and that same were directed at the plaintiff. The social media platforms upon which such statements were published are also not in dispute.

[15] What appears to be in dispute is, however, whether those statements are defamatory of the plaintiff and whether they are true and were published in the interest of the public.

[16] The plaintiff gave evidence and called one witness namely Kawela M'ule ("Ms M'ule"). The defendant gave evidence and did not call witnesses.

The plaintiff's case

[17] The plaintiff testified that she is admitted as a legal practitioner and practises as an attorney under the name and style of AngulaCo Incorporated. In 2002 she became a partner at the firm Lorentz&Bone until February 2006. She was the President of the Law Society of Namibia in 2005 and 2006. She was appointed Acting Judge of the High Court of Namibia in 2017. Presently she is the sole director of the law firm AngulaCo Incorporated, which employs 35 people. In addition, she occupies various positions of trust both in her capacity as a legal practitioner and as director in various private institutions.

[18] She further testified that she met the defendant during 2012. He was her client in 2012 to 2014 at a time when she was practising as partner at AngulaColeman. Eventually such attorney-client relationship terminated under circumstances not related to the present matter.

[19] The plaintiff narrated how the defendant contacted her on 17 September 2018 about the transaction that the defendant allegedly brokered and in respect of which a commission was allegedly due. The plaintiff informed the defendant that Dynatronic pulled out of the agreement, but the parties are back at the negotiation table and undertook to revert to him once the negotiations were concluded. According to her knowledge those negotiations had remained in limbo to date. The plaintiff maintains that the information she shared with the defendant is true and correct.

[20] The plaintiff further states that the defendant continued to make statements that she lied when she said that Dynatronics "pulled out" even after her client had explained and confirmed, in the interdict application, that there were termination and restructuring agreements drafted and being negotiated between the parties.

[21] The plaintiff denied having lied under oath or having committed perjury as alleged by the defendant. The plaintiff further denies the veracity of other statements made by the defendant attacking her character which she states are defamatory of her.

[22] Ms M'ule testified as an expert witness. She stated that she is qualified as a Social Media and Digital Specialist working in private practice. She gave opinion on the terminology and functionality of certain social media platforms and generally how information posted on social media platforms may 'go viral' and be circulated to the public.

[23] According to Ms M'ule, as at 20 August 2021, the defendant had 2 168 followers on Twitter and 4 922 friends on Facebook. At the time when the defendant published the impugned statements, those posts would have immediately been brought the attention of the followers of the defendant at that time. She was unable to determine the number of followers and friends the defendant had at the time when the posts in question were published.

[24] Ms M'ule further stated that since the defendant's Twitter account is public, there is no limit as to who can retweet the tweets in question, and this is generally how tweets tend to 'go viral'. 'Viral' refers to content that is not limited in its distribution and which has gained massive popularity on the platform.

[25] At about the same time as the tweets, the defendant had shared the posts to groups called "Politics Watch Namibia" and "Politics Watch Namibia (Uncensored)" on Facebook. As at 20 August 2021, the former group had over 83 099 members and the latter had about 11 451 members.

[26] According to Ms M'ule all the tweets are no longer available on Twitter as at 1 February 2022.

The defendant's case

[27] The defendant testified that he is a businessman. During 2012 to 2014 the plaintiff and the defendant were engaged in an attorney and client relationship, during which the plaintiff rendered legal advice and services to the defendant.

[28] According to the defendant, he engaged the plaintiff on Twitter 'during 2019' in regard to the Waterberg and Dynotronics matter. After the defendant provided further information to the plaintiff, the plaintiff responded that the parties are still in the process of sorting out the agreement.

[29] According to the defendant, based on the court documents which the plaintiff drafted on behalf of her client, the agreement was already entered into and the property was transferred back in 2017. In his understanding, a property may only be transferred when an agreement was concluded.

[30] The defendant asserts that, 'during 2019', the plaintiff stated there is still no deal, meaning no contract. In 2018 she drafted court documents for her clients stating that the agreement 'was signed on 23 December 2013'. It was for that reason the defendant referred to the plaintiff as a "lying lawyer" on his twitter.

[31] The defendant denies that the statements he made were wrongful and defamatory of the plaintiff. In his opinion, the statements he published are true and in the public interest.

Analysis

[32] At this stage, the court is called upon to determine whether the impugned statements are defamatory of the plaintiff. To do that, the court must first examine the ordinary meaning of the statements published by the defendant. Secondly, the court must establish whether that meaning is defamatory. To do that, one would have to ask how the statements would be understood in their context by an ordinary reader.¹

[33] The defendant tweeted that the plaintiff is a "liar" and that she is a "lying practising attorney". The imputation that the plaintiff "lies" appear with frequency in

¹ *Lombaard v Namibia Holdings (Pty) Ltd* (HC-MD-CIV-ACT-DEL-2017/04304) NAHCMD 102 (2 March 2020) para 113.

the defendant's tweets. In my view, a reasonable person of ordinary intelligence would understand the tweet(s) to mean that the plaintiff tells lies in her personal and professional capacity. There is no doubt that the meaning conveyed by the impugned tweet(s), in the context of the tweet(s), implies that the plaintiff was dishonest and lacks integrity. In my view, the meaning conveyed by the defendant tarnishes the plaintiff's reputation and dignity and tends to lower her reputation in the estimation of right thinking members of the society.

[34] The statement to the effect that the plaintiff has committed perjury, would be understood by a person of ordinary intelligence to mean that the plaintiff had wilfully told an untruth under oath and therefore, committed an offence. There is no doubt that such statement is defamatory of the plaintiff.

[35] The defendant also alleged that the plaintiff had acted unethically, maliciously and with reckless disregard for the truth, as an officer of the court. A reasonable person of ordinary intelligence would understand those words in their ordinary and natural meaning and that the plaintiff had conducted herself unethically and without integrity. In my view the defendant's statement is defamatory of the plaintiff.

[36] In the same view, the allegations to the effect that the plaintiff had conducted herself in an unprofessional manner and has betrayed the justice system and the oath that she took, would be understood by an ordinary reader in their ordinary and natural meaning and that the plaintiff had violated professional ethics and acted without integrity. Such statements are in my opinion defamatory of the plaintiff.

[37] It is trite law that, once the publication of a defamatory statement has been proved, it is presumed that the publication was wrongful and *animo injuriandi*. In order to avoid liability, the defendant is required to raise a defence that excludes, and adduce evidence rebutting, either wrongfulness or intention.²

[38] As already stated, the defendant's defence in the present case is that the statements are true and are in the public interest.

² *Trusco Group International Ltd v Shikongo SA* 8/2009 delivered on 7 July 2010 para 24.

[39] According to the defendant, the plaintiff lied to him when she informed him via private Twitter message, that Waterberg and Dynotronics are still in the process of sorting out the agreement, whereas as agreement was, in reality, already concluded in 2017.

[40] In my opinion there is no merit in the allegation by the defendant that the plaintiff lied in respect of the agreement between Waterberg and Dynotronics. The plaintiff had informed the defendant, via the tweet dated 18 September 2018, that the property in question was transferred the previous year (2017). Furthermore, when the plaintiff informed the defendant (via the tweet also dated 18 September 2018) that the parties are still sorting out their agreement, the defendant responded in a way suggesting he was aware of the issues regarding the agreement which were being sorted out. The defendant appears not to have been alarmed when he was informed that the property was transferred in 2017, thus indicative he was aware of that fact.

[41] Furthermore, there is evidence placed before the court that indicates that the parties to the agreement instructed the plaintiff to attend to the drafting of a termination and a restructuring agreements. According to the plaintiff, the negotiations had remained in limbo to date. There is no credible evidence before court contradicting such an assertion.

[42] I am of the opinion that the defendant has failed to discharge the *onus* on him that the plaintiff lied to him.

[43] Equally, the defendant has failed to show the truthfulness of his allegations that the plaintiff has:

- (a) committed perjury,
- (b) acted unethically, maliciously and with reckless disregard for the truth as an officer of the court,
- (c) conducted herself in an unprofessional and untoward manner or
- (d) has betrayed the justice system and the oath that she took.

[44] In my view, it is clear, on the evidence adduced that the statements tweeted by the defendant were totally false and untrue. Assessed within the context in which they were made, the statements were made with actual malice and total indifference

to the plaintiff's right to dignity and reputation. The defence of "public interest" applies only if the impugned statements are factually true. The publication of defamatory statements cannot be in public interest. The defence put forth by the defendant does not, therefore, have any merit.

Remedy

[45] I now turn to the consideration of the appropriate remedy in the circumstances.

[46] During closing submissions, counsel for the plaintiff contended that based on the facts and circumstance of this matter, a high compensation award be made in this matter. Counsel referred to the cases of *Nghiwete v Nekundi*³ and *Geingos v Hishoono*⁴ in which damages in the amount of N\$250 000 were awarded, and request that the same amount be awarded in the present case.

[47] An award in each case should depend upon the facts of the particular case, and the court is required to make an assessment of what it considers just and fair in the circumstances.

[48] I consider the defamation in the present case to be particularly serious. The defendant was invited to cease launching defamatory attacks on the plaintiff. In his tweet dated 28 February 2019, the defendant called upon the plaintiff to stop calling his lawyer to ask the defendant to stop making defamatory statements and the defendant invited the plaintiff to proceed initiating her action. The defendant stubbornly refused to stop launching his attacks when it was evident that he should do so.

[49] I have had regard to the general trends of awards made by this court. Generally, awards in many defamation cases seem to fall in the range of N\$35 000 to N\$250 000.⁵

³ *Nghiwete v Nekundi* (2) NR 759 (HC) (1142 of 2009) [2009] NAHC 105 (24 July 2009).

⁴ *Geingos v Hishoono* (HC-MD-CIV-ACT-OTH- 538 of 2021) [2022] NAHCMD 48 (11 February 2022).

⁵ *Mbura v Katjiri* (I 4382/2013) [2017] NAHCMD 103 (31 March 2017) para 80.

[40] In the circumstances of the present case, I am of the view that an award of N\$100 000 coupled with an order that the defendant publishes a notice on his social media platforms retracting and apologising for the unfounded allegations, is adequate and appropriate. I shall therefore make an order to that effect.

[51] As regards the issue of costs, I am of the view that the general rule that costs follow the event must find application in this matter.

[52] In the result, I make the following order:

7. The statements made by the defendant concerning the plaintiff, as set out in addendum A to E hereto, made during the period between 25 February 2019 to 22 March 2019, are declared false and defamatory of the plaintiff.
8. The defendant is ordered to pay plaintiff the amount of N\$100 000.
9. The defendant is ordered to pay interest on the aforesaid amount at the rate of 20% per annum, calculated from the date of judgment to the date of final payment.
10. The defendant is ordered to, within ten (10) days of this order, publish the following apology on his social media platforms Twitter and Facebook (depending on where the defamatory statements were made):

‘During the period of 25 February 2019 to 22 March 2019, I published statements about Elize Angola that she was unethical, that she acted unethically, that she committed perjury, that she was reckless and that she acted maliciously and with reckless disregard for the truth as an officer of the court, that she conducted herself to mislead judicial officers for the benefit of her clients, that she acted in an unprofessional manner and that she acted untowardly. Those statements are false. I unequivocally retract those statements and unreservedly apologise for having made them. I regret any inconvenience I caused to Elize Angola. Tommy Veundja Tjaronda.’

11. The defendant is ordered to pay the costs of the plaintiff, such costs to include costs of one instructing and one instructed legal practitioner.
12. The matter is removed from the roll and regarded finalized.

B USIKU
Judge

APPEARANCES:

PLAINTIFF:

S Vlieghe

Of Koep & Partners, Windhoek

DEFENDANT:

T Tjaronda

In person, Windhoek