

REPUBLIC OF NAMIBIA



IN THE HIGH COURT OF NAMIBIA MAIN DIVISION, WINDHOEK

RULING AND REASONS

Case No: HC-MD-CIV-ACT-DEL-2020/01306

In the matter between:

ALOIS GARAI NYANDORO

PLAINTIFF

and

WILLIAM AUPAPA EKANDJO

DEFENDANT

Neutral citation: *Nyandoro v Ekandjo* (HC-MD-CIV-ACT-DEL-2020/01306) [2022]
NAHCMD 541 (7 October 2022)

Coram: OOSTHUIZEN J

Heard: 3 - 5 May 2022 and 9 June 2022

Delivered: 7 October 2022

ORDER

1. The defendant shall pay the amount of N\$30 000 to the plaintiff.
2. The defendant shall pay interest at the rate of 20% per annum on the amount of N\$30 000 from 7 October 2022 to date of final payment.
3. The defendant shall pay the costs of suit to the plaintiff.
4. The matter is finalised and removed from the roll.

RULING

OOSTHUIZEN J:

Introduction

- 1] Plaintiff is Alois Garai Nyandoro an adult male, retired airline pilot residing in Windhoek, Namibia.

[2] Defendant is William Aupapa Ekandjo an adult male, retired airline pilot residing in Windhoek, Namibia.

[3] During January 2020, the defendant wrote and send a letter to the then Chairman of the Board of Air Namibia and copied the letter to the Minister of Works and Transport, the Deputy Minister of Works and Transport, the Deputy Minister of Labour, Industrial Relations and Employment creation, Lieutenant General Sebastian Ndeitunga and to Mr. Walters, the Ombudsman.

[4] The letter was of and concerning the plaintiff as a Board Member and the Interim Chief Executive Officer of Air Namibia.

[5] In the letter, the defendant wrote that he worked for Air Namibia for 23 years since the Airline's inception. The defendant stated that he had an interest in the Airline's wellbeing and survival.

[6] The defendant noted his grievance with the plaintiff for being maltreated by the plaintiff for many years.

[7] The defendant, furthermore, wrote that there was a huge conflict of interest between the plaintiff and Air Namibia of which he (plaintiff) might not have disclosed to the Minister during the plaintiff's appointment as a Board Member.

[8] The defendant summarised the conflict of interest by saying that the plaintiff -

(a) Did not meet the minimum qualification for the position he held as Head Training and Standards;

(b) Air Namibia had to pay for the plaintiff's training for him to be able to qualify in the job although the plaintiff had no suitable experience;

(c) Air Namibia had to fund his instructor license;

- (d) Internal crew submitted grievances due to conflicting engagement concerning disagreements on training;
- (e) The plaintiff forged a crew members' signature necessary to qualify him as an examiner;
- (f) At the time the plaintiff was the defendant's subordinate, the plaintiff undermined defendant's authority;
- (g) The plaintiff has an unresolved case of sexual harassment against him and the victim is still traumatised;
- (h) The plaintiff smeared the reputation of another crew member with dire consequences to the said crew member.
- (i) The plaintiff ill-advised Government Air Transport Services and as a result injured the defendant and three others in that they did not receive compensation for their services to GATS for more than 10 years.
- (j) The plaintiff, as Board Member for Flight Operations, did not meet and communicate with the Flight Operations department and failed to resolve issues in the department.
- (k) There is strong evidence that the plaintiff and the Interim Chief Executive Officer have been out to sabotage the defendant on any effort to revive the national carrier.
- (l) The plaintiff, with others, contributed to the victimisation of the defendant.

Pleadings

- [9] The plaintiff claims N\$200 000 in damages from the defendant for defamation.

[10] The defendant opposes the plaintiff's claim by pleading that he wrote the letter as a grievance against the plaintiff to a limited group of people as fair comment on a matter of public interest and in fairly commenting in the interest of the company (Air Namibia) and the relevant stakeholders.

Summary and findings

[11] The plaintiff and the defendant were single witnesses.

[12] The plaintiff has proved that the defendant abused company internal grievance procedures to publish defamatory matter of and concerning the plaintiff to the addresses of the letter.

[13] It is reputably presumed in the circumstances that the publication was made *animo uniuriandi* and that it was unlawful.

[14] The defendant was enjoined to prove the defence of fair comment in the public interest in order to escape liability.

[15] In order to establish the above defence the defendant should have shown that his statements were fair comments (opinion); the allegations on which he commented were true and the comments were in the public interest. That much is trite.

[16] The defendant tendered mostly uncorroborated evidence. In other respects as for example the sexual harassment smearing and forgery, the defendant tendered hearsay evidence.

[17] The defendant conceded that he had no facts to suggest that the plaintiff sabotaged Air Namibia. The defendant conceded that he had no facts to comment on the plaintiff's forgery.

[18] The defendant's counsel disavowed the defence of qualified privilege alluded to in the pleadings.

[19] The defendant dismally failed to prove the defence of fair comment in the public interest.

[20] The court, however, was of the impression that the defendant was also concerned about the well-being of Air Namibia (now under liquidation).

[21] However, the defendant refused to retract the defamatory statements and to apologise when given the opportunity.

[22] The court shall allow damages to the plaintiff in the amount of N\$30 000.

[23] Costs will follow the result.

[24] It is ordered that:

1. The defendant shall pay the amount of N\$30 000 to the plaintiff.
2. The defendant shall pay interest at the rate of 20% per annum on the amount of N\$30 000 from 7 October 2022 to date of final payment.
3. The defendant shall pay the costs of suit to the plaintiff.
4. The matter is finalised and removed from the roll.

G H Oosthuizen
Judge

APPEARANCES:

PLAINTIFF: Sisa Namandje
Of Sisa Namandje & Co. Inc, Windhoek

DEFENDANT: Natasha Ndilula-Ndamanomhata
Of Kadhila Amoomo Legal Practitioners, Windhoek