

REPUBLIC OF NAMIBIA



HIGH COURT OF NAMIBIA MAIN DIVISION, WINDHOEK

JUDGMENT

Case no: HC-MD-CIV-ACT-OTH-2022/00015

In the matter between:

ALOISA SHINGUNDI NEHOYA

FIRST PLAINTIFF

VERONIKA VENOKATITI NGITKWA

SECOND PLAINTIFF

And

SHALONGO HAIMBODI

FIRST DEFENDANT

ASTERIA ALWEENDO

SECOND DEFENDANT

Neutral citation: *Nehoya v Haimbodi* (HC-MD-CIV-ACT-OTH-2022-00015) [2023]
NAHCMD 393 (7 July 2023)

Coram: TOMMASI J

Heard: 26 April 2023

Delivered: 7 July 2023

Flynote: Defamation – Claim for damages – Defamatory statements issued on facebook in which defendants are accusing the plaintiffs of being a “witches” – Statements defamatory in nature – General Damages as solace – Patrimonial losses not pleaded nor quantified - Award for damages reduced.

Summary: The first defendant, a pastor, interviewed the second defendant on several occasions. These interviews were recorded and then posted on the first defendant’s facebook platforms on two different dates. During the interview the second defendant made statements of a defamatory nature about the first and second plaintiff inters alia that they are practicing witchcraft. The two plaintiffs were also referred to as witches on the first defendant’s facebook page. The defendants failed to enter an appearance to defend. Court found that defamatory statements published and, in the absence of evidence to the contrary, the statements are unlawful and made with the intention to injure the plaintiffs. Damages awarded in the sum of N\$15 000 for each plaintiff and the defendants are liable jointly for the payment of the damages.

ORDER

1. The first plaintiff is awarded damages in the sum of N\$15 000 which amount is to be paid by the first and second defendants jointly and severally, the one paying the other to be absolved.
2. The second plaintiff is awarded damages in the sum of N\$15 000 which amount is to be paid by the first and second defendants, jointly severally, the one paying the other to be absolved.
3. Interest at the rate of 20 per cent per annum from date of judgment to date of final payment.
4. Costs of suit.
5. The matter is finalised and removed from the roll.

JUDGMENT

TOMMASI J:

[1] The plaintiffs have jointly instituted action against the defendants for having authored and published defamatory audio and video recordings on the first defendant's facebook platform which has a viewership and/or following of 4 997 people. The summons was served on both defendants personally but the defendants did not enter an appearance to defend.

[2] The court required of the plaintiffs to fully deal with the merits in the damages affidavits and directed counsel to make written submissions as to the quantum with reference to case law. The plaintiffs filed two damages affidavits subsequent to this order as well as concise submissions. The court, in the absence of an appearance to defend, is left with only the version of the plaintiffs.

[3] The first plaintiff is an adult female who is self employed as a clothing tailor at Onhimbu Open Market in the Omusati Region. The second plaintiff is an adult female who is self-employed as an agricultural seeds vendor at Onhimbu Open Market in the Omusati Region. The first defendant is an adult male pastor at Believers Christian Church and Bible study located at Onheleiwa, Etayi Constituency. The second defendant is an adult female who is employed as a teacher at Ondeitotel Combined School.

[4] The plaintiffs particulars of claim states that the defendants authored and featured audio and video recordings which were widely published and circulated, and which contained false, defamatory statements alternatively suggestions, innuendos and insinuations about and concerning the plaintiffs. The statements were made in Oshiwambo. A transcript thereof with a sworn translation thereof was attached to and parts thereof were incorporated in the particulars of claim.

[5] The recordings take the form of an interview between the first and the second defendants. There are several different recordings. Two recordings were published on 31 August 2021 on the first plaintiff's facebook platform. The plaintiffs hereafter addressed a letter of demand to the defendants on 27 October 2021 demanding an apology and payment of damages. On 30 October 2021, three more video recordings were published on the same platform. Statements were also posted on first defendant's facebook account on unknown dates.

[6] The plaintiffs aver that the statements and/or suggestions, innuendos and insinuations are:

- (i) 'First plaintiff was speaking from inside the second defendant's body by virtue of the first plaintiff practicing witchcraft on her;
- (ii) First plaintiff started practicing witchcraft at the behest of second plaintiff;
- (iii) First plaintiff trained her two minor children in witchcraft;
- (iv) First plaintiff bewitch her husband;
- (v) First plaintiff by practicing witchcraft, has caused several miscarriages of pregnancies of women at the church which first plaintiff attends.
- (vi) First plaintiff in carrying out her trade as a seller of clothing at Onhimbu Open Market utilises witchcraft charms to attract customers;
- (vii) First plaintiff is a member of the "illuminati" an association of witches and wizards,
- (viii) First plaintiff is responsible for house fires and car accidents in Otapi
- (ix) First plaintiff is a witch;
- (x) First plaintiff bewitched the second defendant and did so with the intention to harm her;
- (xi) First plaintiff kills members of her community including unborn children through witchcraft by causing their homes to be burnt down, car accidents and miscarriages; and
- (xii) First plaintiff has driven her former boyfriends to mental insanity.'

[7] Similar allegations were made in respect of second plaintiff. The gist of these allegations are that the two plaintiffs are witches and perform the acts generally accepted to be that of witches.

[8] The first plaintiff stated in her damages affidavit that these allegations are false and has caused her considerable harm. She has been shunned by the community she lives in. She is unable to attend cultural and social events because she has been branded by the two defendants as a witch. She suffered psychological harm and her children are seriously distressed as a result of social exclusion at school. She maintains that her good name has been tarnished and irreparably damaged. In the alternative, she claims that the statements infringed her right to dignity as provided for in Article 8 of the Namibian Constitution.

[9] The first plaintiff claims further that her business at the open market, her only source of income, has been negatively impacted. She has been severely embarrassed and humiliated. Her confidence and her self-worth has been negatively affected. She is of the view that her good name as a self-employed young woman trying to make an honest living, has been gravely impaired by the defendants' actions. She is no longer perceived as a valuable member of her community but as a witch who often practices witchcraft on people she knows.

[10] The second plaintiff's damages affidavit contains almost identical averments as those of the first plaintiff. On the facts presented, there appear little differences in the circumstances of both plaintiffs. They are both self-employed women selling their wares at the same open market and in terms of the publication they are both tarnished with the same brush.

The law

Defamation

[11] There are a plethora of cases dealing with claims for defamation of character and it deals extensively with the elements of this claim and the defences thereto. See *Nahole v Shiindi Nangolo v Jaco, and Ekandjo v David Trustco Group International Ltd and Others v Shikongo*.¹ There is therefore no need for this court to rehash what has been stated therein, save to cite the following from *Nahole v Shiindi*², *supra*:

‘Once publication of defamatory statements relating to the plaintiff has been proved, the two presumptions arise: that the publication was unlawful and the defendant acted with *animus injuriandi*. The onus is now on the defendant to establish justification or that the publication was reasonable.

[12] Like in the above matter the defendants chose not to oppose this action and the presumptions remain intact. There is no doubt that the statements published on the first defendants facebook platform, are defamatory. What remains for this court to be determined is the issue of quantum.

Quantum

[13] Ms Chinsembu, counsel for the plaintiff referred this court to the following citation in *Mbura v Katjiri*³:

‘A number of general factors may affect the assessment of damages for defamation; the character, status and regard of the plaintiff; the nature and extent of the publication; the nature of the imputation; the probable consequences of the defamation; partial justification (e.g. publication of truth which is not for the public benefit); . . . whether there has been a retraction or apology; and whether the defamation was oral or in permanent form. In addition to these and other relevant factors, the court is entitled to take into account of comparable awards in other defamation cases and the declining value of money’

The court is in agreement that these are the factors which ought to be considered.

¹ *Nahole v Shiindi* (I 220/2014) [2014] NAHCNLD 53 (03 October 2014; *Nangolo v Jaco, and Ekandjo v David* 2023 (1) NR 192 (NLD). *Trustco Group International Ltd and Others v Shikongo* 2010 (2) NR 377 (SC).

² See *Nahole v Shiindi* above at para 7.

³ *Mbura v Katjiri* (I 4382/2013) [2017] NAHCMD 103 (31 March 2017).

[14] Ms Cinsembu referred this court to the *Trusco*⁴ matter where the court quotes Sachs J and stressed the importance of monetary awards. She however cites only a part of the quotation. The full quotation, paragraph 90 - 91 is as follow:

'As Sachs J noted in Dikoko's case in the South African Constitutional Court:

'There is something conceptually incongruous in attempting to establish a proportionate relationship between vindication of reputation on the one hand and determining a sum of money as compensation on the other. The damaged reputation is either restored to what it was, or it is not. It cannot be more restored by a higher award and less restored by a lower one. It is the judicial finding in favour of the integrity of the complainant that vindicates his or her reputation, not the amount of money he or she ends up being able to deposit in the bank.'

Sachs J has however also pointed out that awards of damages remain important:

'In our society money, like cattle, can have significant symbolic value. The threat of damages will continue to be needed as a deterrent as long as the world we live in remains as money-oriented as it is. Many miscreants would be quite happy to make the most fulsome apology (whether sincere or not) on the basis that doing so costs them nothing — it is just words. Moreover it is well established that damage to one's reputation may not be fully cured by counter-publication or apology; the harmful statement often lingers on in people's minds. So even if damages do not cure the defamation, they may deter promiscuous slander, and constitute a real solace for irreparable harm done to one's reputation.'

[15] The court in this matter reduced the award from N\$175 000 to N\$100 000.

[16] In *Platt v Apols*⁵, a medical practitioner was accused in a facebook post of abusive and aggressive behaviour towards the defendant's mother and other people. The defendant in that matter refused to remove the post even after summons. The court when dealing with the issue of quantum cites *Muller v SA Associated Newspapers Ltd*

⁴ See footnote 1 above.

⁵ *Platt v Apols* 2021 (2) NR 321 (HC).

*and Others*⁶ where the court points out the following factors which ought to be taken into consideration the quantum of damages:

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

[17] The court in the *Platt*⁷ matter also had the following to say about the use of social media to make defamatory statements:

'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 is to approach the courts for an appropriate relief and where it is proven that such posts were defamatory, the relief must be granted.'

The court awarded the amount of N\$20 000 to the plaintiff in damages.

[18] In *Amushila v Cornelius*⁸ the court awarded damages in the sum of N\$15 000 for a defamatory statement of a businesswoman published to two persons

[19] In *Amukete v Iiyagaya*⁹ the court, having regard to the fact that, as school principal, plaintiff held a prominent position in his community, the defendant's repetition of the defamatory statements of various occasions and the fact in a comparable matters, the court awarded damages of N\$70 000.

[20] In *Nangolo v Jacob, supra*, the plaintiff alleged that the defendant made defamatory statements concerning him to the effect that he used his restaurant and bar to distribute poison to the members of his community and further that the plaintiff was

⁶ *Muller v SA Associated Newspapers Ltd and Others* 1972 (2) SA 589 (C) at 595A.

⁷ See footnote 5 above.

⁸ *Amushila v Cornelius* (HC-NLD-CIV-ACT-DEL-2022/00131 [2022] NAHCNLD 88 (12 September 2022).

⁹ *Amukete v Iiyagaya* (HC-NLD-CIV-ACT-DEL-2019/00047) [2019] NAHCNLD 103 (30 September 2019).

poisoning the members of his community. The publication was made to two persons. The court awarded an amount of N\$15 000.

[21] The two plaintiffs are business women and sell their wares at an open market and appear to have some standing in the community they live in. The choice of publication is through social media. It was recurrent and widespread. This is an aggravating factor. The first plaintiff's children are also affected and this to my mind further aggravates the publication. It does however appear that the first defendant tried to avoid the publication of the first and second plaintiffs' names after receiving the letter of demand although no formal apology was made.

[22] There is no reason for for the court to distinguishing between the two plaintiffs as the second plaintiff is mentioned in association with the conduct of the first plaintiff. The same is applicable to the roles that both the first and the second defendant played in making the statements.

[23] Having regard to the evidence provided to the court and considering awards made by this court this court is of the view that an appropriate award for each plaintiff would be N\$15 000.

[24] In the result the following order is made:

1. The first plaintiff is awarded damages in the sum of N\$15 000 which amount is to be paid by first and second defendants jointly and severally the one paying the other to be absolved.
2. The second plaintiff is awarded damages in the sum of N\$15 000 which amount is to be paid by the first and second defendants, jointly and severally the ne paying the other to be absolved.
3. Interest at the rate 20 per cent per annum from date of judgment to date of final payment.
4. Costs of suit.

5. The matter is finalised and removed from the roll.

M A TOMMASI

Judge

APPEARANCES

1st & 2nd PLAINTIFF: W Chinsembu
Henry Shimutwikeni & Co Incorporated (Eenhana Branch)
Omusati Region

1st DEFENDANT: S Haimbondi
Amamulegne Circuit Outapi
Omusati Region

2nd DEFENDANT: A Alweendo
Amamulegne Circuit Outapi
Omusati Region