

REPUBLIC OF NAMIBIA



IN THE HIGH COURT OF NAMIBIA, MAIN DIVISION, WINDHOEK

RULING IN TERMS OF PRACTICE DIRECTION 61

<b>Case Title:</b>	<b>Case No:</b>
Pieter Farmer	HC-MD-CIV-ACT-OTH-2022/02903
Plaintiff	<b>Division of Court:</b>
and	Main Division
Minister of Home Affairs, Immigration, Safety and Security	<b>Heard on:</b>
Commissioner General:	04 December 2023
Raphael Hamunyela	1 <sup>st</sup> Defendant
Officer in charge: Ester Joseph	2 <sup>nd</sup> Defendant
Case Management Officer: A.L.P Baisako	3 <sup>rd</sup> Defendant
	4 <sup>th</sup> Defendant
<b>Heard before:</b>	<b>Delivered on:</b>
Honourable Lady Justice Rakow	23 February 2024
<b>Neutral citation:</b> <i>Farmer v Minister of Home Affairs, Immigration, Safety and Security</i> (HC-MD-CIV-ACT-OTH-2022/02903) [2024] NAHCMD 69 (23 February 2024)	
<b>Order:</b>	
1. The claim of the plaintiff is dismissed with costs.	
2. The matter is removed from the roll and is regarded finalised	
<b>Reasons for order:</b>	
RAKOW J:	
[1] The plaintiff is Pieter Farmer, a male Namibian citizen incarcerated at the Elizabeth Nepemba Correctional Facility in Rundu. He is a sentenced inmate convicted of murder. The first defendant is the Minister of Home Affairs, Immigration, Safety and Security, Dr Albert Kawana who is sued in his official capacity. The second defendant is the Commissioner-General of the	

Namibian Correctional Service, Raphael Tuhafeni Hamunyela, who is also sued in his official capacity. The third defendant is Assistant-Commissioner Ester Joseph, the officer in charge of the Elizabeth Nepemba Correctional Facility. She is sued in her official capacity. The fourth defendant is Senior Chief Correctional Officer A.L.P. Baisako, who is a case management officer at the Elizabeth Nepemba Correctional Facility.

### Background

[2] The plaintiff was temporarily transferred from the Elizabeth Nepemba Correctional Facility to the Hardap Correctional Facility. On 27 October 2021 the plaintiff gained access to his transfer report which was completed by the fourth defendant at the time of his transfer. Under the heading – Other Information – the fourth defendant wrote the following:

‘A description of the offender’s general attitude and behavior has been positive for the duration of his stay at Elizabeth Nepemba Correctional Facility reason being no negative security incidents have been noted against him. Nonetheless it is worth noting that the offender at times experiences periods of irritable (sic) when he does not get his way with officers. He is a constant badger and whiner, in a way a dormant instigator amongst other offenders. Nevertheless he still primarily maintains to remain positive and driven to use his time in the facility, engaging in positive activities to relieve stress such as the arts and craft.’

[3] This report accompanied the plaintiff to the Hardap Correctional Facility and was signed by the fourth defendant on 10 September 2021. The plaintiff alleges that this statement by the fourth defendant was defamatory and harmed his *dignitas*. He therefore claims N\$500 000 for the suffering caused by the defamatory statement, interest on the said amount and an order ordering the fourth defendant to retract her statement and to apologize to the plaintiff within five days of the court order.

[4] The defendants took a point of law in their plea that was filed in that, the claim does not meet the delictual requirements of defamation and that the statement was done as a means to inform the next correctional facility of the plaintiff’s behaviour as part of standard operating procedures within the Correctional Service.

### Arguments by the parties

[5] The plaintiff argues that the case notes cannot be regarded as confidential as the word confidential appears nowhere on the document and therefore the document was never treated

as confidential. The plaintiff further contended that the court is to find a workable balance between two equally important rights being the plaintiff's individual right to an unimpaired reputation and the fourth defendant's freedom of expression and the right of society to be informed.

[6] The plaintiff desires respect from officials and the utterings of the fourth defendant infringes on the respect he should be afforded. Such a statement further is not true and there is no documentary proof supporting the statement. The court further cannot ignore the plaintiff's claim in finding that the statement is not serious as it violates the plaintiff's constitutional rights in extreme terms.

[7] For the defendants it was argued that the plaintiff must establish on a balance of probabilities that the defendant had published a defamatory statement concerning the plaintiff. The plaintiff further has to prove that the said statement was injurious to his reputation, dignity, moral turpitude or integrity and this the plaintiff has not done.

[8] It was further argued that the test which needs to be applied, is an objective one and one has to look whether, in the opinion of a reasonable person with normal intelligence and development, the reputation of the person concerned has been injured. The purpose of the internal case notes done by the relevant officers dealt with the behavioral issues of the plaintiff and it was done for the purpose of a transfer of the defendant between correctional facilities. It was not done wrongfully and with malice and cannot be said to be false as these notes documented the plaintiff's behaviour over a period of time.

[9] For the defendants it was further argued that the published statement must cast doubt on the plaintiff's moral turpitude, morality or integrity. It was submitted that the plaintiff did not suffer any injury to his reputation since he is a sentenced offender serving a long prison sentence for murder and he has not shown how these notes affected his integrity or reputation in the society at large.

#### Legal considerations

[10] Publication of a defamatory statement is prima facie wrongful and the onus rests on the defendant to allege and prove facts that dispel the wrongfulness and examples of this can be truth and in the public interest.<sup>1</sup>

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<sup>1</sup> *Neetling v du Preez; Neetling v the Weekly Mail* (1994) 3 All SA 479 (A)

[11] It is further a question of law whether the words complained of are reasonably capable of conveying to the reasonable reader a meaning which defames the plaintiff.<sup>2</sup> It is further also necessary to prove *animus iniuriandi* which has two elements namely, the intent to defame and knowledge of wrongfulness.<sup>3</sup>

[12] When it's pleaded that the statement was the truth and is in the public interest, this must be proved by the defendant. It is further also a defence to plea qualified privilege when words were published in the discharge of a duty or exercise of a right to a person who has a duty or right to receive the statement. The test is an objective one and the court will judge by the standard of the reasonable person, having regard to the relationship between the parties and the surrounding circumstances.<sup>4</sup> Çorbett JA says the following in *Borgin v De Villiers and Another*<sup>5</sup>:

'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 criterion as to whether public policy justifies the publication and requires that it be found to be a lawful one.'

[13] In the matter of *Stephanus Unoovene v Lazarus Nangolo*<sup>6</sup> Van Niekerk J explained the applicable principles as follows:

'[7] 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'.

[14] In *Bednarek and Others v Hannam and Another*<sup>7</sup> the following was said regarding the words complained about:

'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

<sup>2</sup> *Mohamed v Jassiem* 1996 (1) SA 673 (SCA) at 703-704

<sup>3</sup> Amler's Precedents of Pleadings, Lexisnexis, 7<sup>th</sup> edition p 164

<sup>4</sup> Amler's Precedents of Pleadings supra at p 169

<sup>5</sup> *Borgin v De Villiers and Another* 1980 (3) SA 556 (A)

<sup>6</sup> *Unoovene v Nangolo* 2008 (2) NR 497 (HC) at para 7

<sup>7</sup> *Bednarek And Others v Hannam And Another* (I 2615/2013) [2016] NAHCMD 12 (03 February 2016)

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.'

Dealing with the plea

[15] In this instance it was pleaded that the statement made by the fourth defendant was true and is part of the standard operational procedure when inmates are transferred from one correctional facility to the other. In the courts opinion, this is a plea of qualified privilege as the fourth defendant wrote the specific statement as part of describing the way in which the plaintiff conducts himself in the Elizabeth Nepemba Correctional Facility and as such, it was information that the employees at the Hardap Correctional Facility would be interested in. It is further in the public interest to know the way in which the plaintiff conducts himself in order to ensure that no unnecessary unrest is caused in any correctional facility by the plaintiff. It can be said that the utterance or statement was for safety reasons and as such no malice was intended.

[16] I therefore uphold the plea that the claim of the plaintiff is not good in law and the claim is therefore dismissed with costs.

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

1. The claim of the plaintiff is hereby dismissed with costs.
2. The matter is removed from the roll and is regarded finalized.

<b>Judge's signature</b>	<b>Note to the parties:</b>
E RAKOW Judge	Not applicable
<b>Counsel:</b>	
<b>Plaintiff:</b>	<b>1, 2, 3 &amp; 4 Defendants:</b>
P Farmer (in-person) Evaristus Shikongo Correctional Facility, Tsumeb	M Meyer Office of the Government Attorney, Windhoek