

NOT REPORTABLE

REPUBLIC OF NAMIBIA



HIGH COURT OF NAMIBIA MAIN DIVISION, WINDHOEK

JUDGMENT

Case No: I 629/2009

In the matter between:

VICTORIA NUULE

PLAINTIFF

And

JULIA KAMWELA

DEFENDANT

Neutral citation: *Nuule v Kambwela* (I 629-2009) [2014] NAHCMD 219 (21 July 2014)

Coram: VAN NIEKERK J

Heard: 8, 9 February 2012

Delivered: 21 July 2014

Flynote: **Defamation** – Claim for defamatory statements repeated to various persons and on various occasions over period of about two years – Statements held to be defamatory – In denying liability defendant’s case was that statements were published only after the contents thereof had become common knowledge – This defence rejected - Person who publishes a defamatory rumour cannot escape liability on the ground that he passed it on only as a rumour, without endorsing it - In denying liability, defendant relying, inter alia, on alleged truth of statements – Truth *per se* is no defence – The truth of the statement is only a defence if it is published for the public benefit - Defendant must plead and prove that statements the truth and published for the public benefit – *In casu* not pleaded – Held that defendant cannot rely on such defence – One of statements made for purposes of court proceedings – Defendant sought to raise defence of qualified privilege during trial – Such defence not pleaded – Held that defendant cannot rely on such defence – Held further on facts that defendant did not rebut presumptions that defamatory statements made wrongfully and with *animus iniuriandi* - Plaintiff awarded N\$40 000.

ORDER

There shall be judgment for the plaintiff against the defendant for:

1. Payment in the amount of N\$40 000.
2. Interest thereon at the rate of 20% per annum from the date of judgment to the date of payment.
3. Costs of suit.

JUDGMENT

VAN NIEKERK J:

[1] The plaintiff instituted an action for damages arising from alleged wrongful and defamatory statements made by the defendant.

The pleadings

[2] In the particulars of claim the plaintiff alleges, *inter alia*, as follows:

‘3. Since 2007 to date the Defendant has stated to numerous members of the public residing in both Oshakati and Uukwaludhi of and concerning the Plaintiff that:

3.1 “Victoria Nuule is having an extra-marital relationship with my husband.”

4. The statement made by the Defendant is wrongful and defamatory of the Plaintiff.

5. The statement was and is being made with the intention to defame the Plaintiff and to injure her reputation.

6. The statement has been and is being understood by the addressee’s (*sic*) and was/is intended by Defendant to mean that the Plaintiff is:

6.1 Is (*sic*) a lady of loose morals;

- 6.2 She is (*sic*) sexually promiscuous;
 - 6.3 She breaks (*sic*) up other people's marriages;
 - 6.4 She is (*sic*) a dishonest person;
 - 6.5 She is (*sic*) a dangerous person as she has no respect for the sanctity of marriage.
7. The Defendant stated under oath on or about the 5th of September 2008 of and concerning the Plaintiff that;
- 7.1 "I am married for eighteen years with Mr. Johannes Kwabwela (*sic*) and we were happily married till the date my husband get (*sic*) involved in an extra (*sic*) relationship with his employee Ms Victoria Nuule."
 - 7.2 "Since that my husband used threats, harass (*sic*) and abuse (*sic*) me emotionally by accusing me of even stealing his company money and withdrew properties (*sic*) which he gave me example (*sic*) the vehicle which is at this stage with that lady Victoria Nuule."
8. The statement under oath by the Defendant is wrongful and defamatory of the Plaintiff.
9. The statement under oath was made with the intention to defame the Plaintiff and injure her reputation.
10. The statement was understood by the addressee's (*sic*) and was intended by the Defendant to mean that the Plaintiff is:
- 10.1 Sexually indiscriminate;
 - 10.2 A lady of loose morals;
 - 10.3 A person who destroys marriages due to her predilection of having sexual relations with married man (*sic*);
 - 10.4 Capable of turning men into brutes with her sexual prowess.

11. The Defendant further wrongfully and maliciously defames the Plaintiff by contacting the Plaintiff's place of employment and leaving messages with various employees instructing the Plaintiff to "stop sleeping with my husband."
12. The statement was/is understood by the addressee's (*sic*) and was/is intended by Defendant to mean that Plaintiff is:
 - 12.1 Sexually indiscriminate;
 - 12.2 Is (*sic*) a lady of loose morals;
 - 12.3 Has (*sic*) attained her managerial position at work due to her sexual prowess and not due to her abilities.
13. The malicious and unlawful defamation of the Plaintiff by the Defendant has caused the Plaintiff acute emotional distress.
14. The member (*sic*) of the public who reside in the same area as Plaintiff point fingers at the Plaintiff when she appears in public and state of and concerning Plaintiff that (*sic*) "Oh look she is the one sleeping with John".
15. As a result of the false and malicious denigration of the Plaintiff by the Defendant two of the Plaintiff's relationships ended, one of the relationships being of long-standing (*sic*), and the Plaintiff is hesitant to appear in public for fear of being condemned as a consequence of the malicious untruths spread by the Defendant.
16. As a result of the defamation which is on-going, the Plaintiff has been injured in her good name and reputation and in her feelings and dignity.'

[3] The plaintiff claims damages allegedly arising from injury to her good name and reputation and for injury to her feelings and dignity in the total amount of N\$100 000.

[4] The defendant in her amended plea makes, *inter alia*, the following allegations:

'2.

AD PARAGRAPH 3, 4, 5, & 6 THEREOF:

- 2.1 Defendant admits having re-affirmed that Plaintiff was having an adulterous relationship with the Defendant's husband, after the apparent extra-marital relationship between the Plaintiff and the Defendant's husband, Mr John Kambwela, had become common knowledge specifically at Eland General Market.
- 2.2 Further, Defendant pleads that the statement was not first made or directed to the members of the public by the Defendant, but that the extra-marital relationship between the Plaintiff and the Defendant's husband had become common knowledge. Defendant had and still has reasonable grounds to believe that the extra-marital relationship between the plaintiff and the Defendant's husband exist (*sic*) more so given that even the Defendant's husband admitted to having such an adulterous relationship with the Plaintiff.
- 2.3 Defendant denies that the statement was made wrongfully or with an intension (*sic*) to injure the Plaintiff's reputation, because in essence the existence of the adulterous relationship between the Plaintiff and the Defendant's husband is the truth.

3.

AD PARAGRAPHS 7-16 THEREOF:

- 3.1 Defendant admits having made the statements contained under *paragraphs 7 and 11* of the Plaintiff's Particulars of Claim. Defendant repeats it's (*sic*) Plea as set out under *Ad paragraph 2* hereinabove, as if same is specifically pleaded and incorporated herein.
- 3.2 Save as otherwise specifically admitted each and every allegation contained in these paragraphs is denied and the Plaintiff is put to the full and strict proof thereof.'

[5] The defendant instituted a counter-claim in which she claimed damages of N\$650 000 from the plaintiff arising from an alleged adulterous relationship in which the plaintiff and the defendant's husband were involved and which relationship allegedly still persisted at the time. This counter-claim was withdrawn during the trial, the parties agreeing that no order as to costs should be made.

The issues to be tried as determined during the pre-trial proceedings in terms of rule 37(12)

[6] By agreement between the parties the pre-trial order in this matter identified the issues to be determined at the trial to be the following (the insertions in square brackets are mine):

'AD PLAINTIFF'S CLAIM:

1.1 Whether the first statement made on or about since 2007 to the effect of:

"Victoria Nuule is having an extra-marital relationship with my husband."

was made with the intention to defame the Plaintiff and to injure her reputation.

1.2 Whether the statement made by the Defendant is wrongful and defamatory of the Plaintiff.

1.3 Whether the statement has been and is being understood by the addressee's (*sic*) and was intended by the Defendant to mean that the Plaintiff is

1.3.1 is (*sic*) a lady of loose morals

1.3.2 she is (*sic*) sexually promiscuous

1.3.3 she breaks (*sic*) up other people's marriages.

1.4 Whether the second statement made under oath by the Defendant on or about 5th September is wrongful and defamatory of Plaintiff.

1.5 Whether the aforesaid statement was made with the intention to defame the Plaintiff and injure her reputation.

1.6 Whether the statement has been and is being understood by the addressee's (*sic*) and was intended by the Defendant to mean that the Plaintiff is sexually indiscriminate[; a] lady of loose morals[;] and a person who destroys marriages due to her predilection of having sexual relations with married man (*sic*).

1.7 Whether the third statement of made (*sic*) by the Defendant via messages left at the Plaintiff's place of employment to the effect of "*stop sleeping with my husband*" is wrongful and maliciously defames the Plaintiff.

1.8 Whether the aforementioned statements are true.'

[7] The Court added a further issue, namely whether the defendant's plea contains sufficient allegations to sustain a defence to the plaintiff's claim.

[8] The parties further expressly agreed that paragraphs 3 and 7 of the plaintiff's particulars of claim are not in dispute.

The evidence presented by the plaintiff

The plaintiff

[9] The plaintiff testified that she is employed as the manager of a business called Eland General Market, situated at Ondukuta, Uukwaaludhi. The business consists of approximately 8 branches and employs about two hundred employees. She has been employed there for 13 years and became the manager in 2007.

[10] The defendant started telling people in Uukwaludhi and Oshakati since 2007 that the plaintiff was having a relationship with the defendant's husband. The defendant also mentioned it at a meeting at her house. She further stated to the employees at the business that the plaintiff should stop sleeping with her husband.

[11] In an application under oath for a protection order dated 8 September 2008 the defendant made an affidavit which included the statement set out in paragraph 7 of the plaintiff's particulars of claim. A copy of the affidavit was handed in without objection as Exhibit "A".

[12] It is common cause that the defendant's husband is the plaintiff's employer. The plaintiff denied in testimony ever having had any kind of relationship apart from that of employer/employee with the defendant's husband.

[13] She testified that the statements made to employees at her workplace hurt her very much because the employees did not relate well to her as they considered her

to be a bad person who is a loose woman, who destroys other people's marriages and sleeps around. At the time the plaintiff had been involved in a serious love relationship with another man, but it was destroyed by the talk that she was sleeping with her employer. This caused her emotional pain. Subsequently, whenever she dates another man, the allegations spread by the defendant would reach his ears and the relationship would turn sour. As a result of the defendant's statements, which are untrue, certain people reported the matter to her parents, who always confront her when she visits them with allegations that she is sleeping with her employer. She claims N\$100 000 in damages as the defendant's defamatory statements destroyed her good name.

[14] During cross-examination it emerged that the plaintiff is 34 years old; that she passed Grade 12; that she obtained a diploma as an executive secretary from a commercial college in Cape Town and that she commenced working for the defendant's husband as a bookkeeper during 2000. She was questioned about her duties and her salary. She earned N\$1 200 per month as a bookkeeper and N\$1 800 per month, excluding overtime, as a manager. Throughout her employment she stayed, along with about 30 to 40 other employees, in accommodation provided by her employer at the complex where they work. The employees are charged only about N\$30 per month for water.

[15] Exhibit "A" was faxed to her employer by a client. The plaintiff was in charge of the fax machine, which is kept in her office. As part of her duties she perused the document to establish what it was about and noticed her name in the document. She made a copy for herself and handed the faxed document to her employer. She complained to him about its contents. It was suggested to her that Annexure "A" was an annexure to a protection order and that these were the documents which were faxed. The plaintiff acknowledged that there were also other documents accompanying Exhibit "A", but she was not sure whether it was a protection order.

[16] The defendant used to also work in the business, but from about the end of 2006 or during 2007 she no longer did. The plaintiff could not state what duties the defendant performed, except that she never saw any document or file relating to her

position, if any. It was put to her that the defendant used to be the manager and co-owner of the business until she was 'fired'. The plaintiff did not have any knowledge of this. She stated that another woman used to pay all the employees.

[17] It was further put to the plaintiff that she commenced employment as a domestic worker in the home of the defendant and her husband. This she vehemently denied. I pause to note here that the defendant never testified to this effect. It was put to her that she later first became the defendant's secretary and later the bookkeeper. The plaintiff denied this, testifying that she was employed as bookkeeper from the start.

[18] By eliciting hearsay evidence during cross-examination counsel for the defendant succeeded in establishing the plaintiff's case that a number of love relationships failed because of the rumours spread by the defendant. He further elicited hearsay in favour of the plaintiff's case that the rumours were untrue by establishing that the defendant's husband denied any knowledge of an extra-marital relationship when the plaintiff confronted him about the contents of Exh "A".

[19] The plaintiff acknowledged that she was driving the business vehicle which the defendant used to drive, but she denied that the vehicle was given to her as a gift. She further testified that this vehicle was at times also driven by a certain Linda who used to work at the business.

[20] The plaintiff expanded on her evidence-in-chief by testifying that she is a supervisor and also communicates with clients. If they should hear the rumours spread about her they would not be inclined to accept her 'advices', as she put it. She testified that she suffered from stress and could not do her job properly. She said that she had a good name before, but that it was destroyed by defendant's statements. She also said that she is a member of the Anglican Church and moves in the community. She fears not being able to obtain alternative employment should the rumours reach the ears of prospective employers.

The plaintiff

[21] The plaintiff testified that she had been married to her husband for 22 years, but that they were separated. She used to be the co-owner of the Eland General Market business since its establishment in 1996. She used to be the general manager of all the branches. In September 2006 she 'quit' at the behest of her husband. She used to employ the plaintiff since 2000 as a secretary. She was not aware that the plaintiff was appointed as bookkeeper. As general manager she had certain benefits, including insurance, medical aid and pension.

[22] The plaintiff as an employee had the fringe benefits of free accommodation and company transport. She was also permitted, like other employees to take stock from the business on credit and to pay for same at the end of the month.

[23] She admitted making the affidavit handed in as Exhibit "A".

[24] The defendant said that there were problems in her marriage and when she spoke to her husband about it in their bedroom one morning, he mentioned that other people are saying that he has an affair with the plaintiff. The defendant said she was the last to hear and she felt very bad because she treated the plaintiff like her own daughter.

[25] She denied repeating the rumours to members of the public although she admitted that she did repeat the contents of the rumours during a meeting at her house. She also denied having mentioned anything during 2007. However, this evidence is contrary to her amended plea and the pre-trial agreement and was objected to by the plaintiff's lawyer.

[26] She testified that her car was taken from her and that the plaintiff was driving it the very next day after she was told to leave. She appears to be suggesting that this affords evidence of the plaintiff's affair with her husband. However, she also testified that this was her personal car registered in her name. If this is so, I do not understand on what basis her husband could have 'given' the vehicle to the plaintiff as a gift as was suggested during cross-examination. Besides, the defendant did not repeat the instructions under oath.

Are the statements defamatory?

[27] As can be seen from the pre-trial proceedings, it is not in issue that the defendant made the various statements as alleged. The question is whether they are defamatory. This is to be objectively determined. In *Afshani v Vaatz* 2006 (1) NR 35 (HC) the correct approach was set out as follows (at 45C-E):

'[22] 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' (*per* Greenberg JA in *Conroy v Stewart Printing Co Ltd* 1946 AD 1015 at 1018). The standard from which the enquiry should depart, Ponnar AJA more recently said in *Mthembi-Mahanyele v Mail & Guardian Ltd and Another* 2004 (6) SA 329 (SCA) at 360H-I, 'is the ordinary reader with no legal training or other special discipline, variously described as a "reasonable", "right-thinking" individual of "average education" and "normal intelligence". It is through the eyes of such a person who is not "super-critical" or possessed of a "morbid or suspicious mind" that I must read' the statement.'

(See also *Unoovene v Nangolo* 2008 (2) NR 497 (HC) at 498H-I).

[28] I first consider the statement in paragraph 3 of the plaintiff's particulars of claim. The plaintiff alleged, read with the pre-trial agreement, that the words used were intended to convey the meaning and were, indeed, so understood, that the plaintiff is (i) a lady of loose morals; (ii) sexually promiscuous; (iii) and breaks up other people's marriages.

[29] While 'a lady of loose morals' appears to be a contradiction in terms, I do think that the statement suggests a certain moral and sexual impropriety on the part of the plaintiff and that she lacks some respect for the institution of marriage. As such the statement tends to lowers the plaintiff in the estimation of right-thinking members of society generally.

[30] In my view the same can be said about the statement quoted in paragraph 7 of the particulars of claim. I do not think, though, that the statement tends to suggest

the meaning attributed to it as set out in paragraphs 10.3 and 10.4 of the particulars of claim, as the statement concentrates more on the alleged behaviour of the defendant's husband.

[31] As for the messages left with various employees instructing the plaintiff to 'stop sleeping with my husband', the emphasis is more on the ongoing sexual nature of the alleged relationship. It clearly is defamatory, although I do not think that it suggests the meaning as set out in paragraph 12.3 of the particulars of claim.

Has the defendant succeeded in rebutting the two applicable presumptions?

[32] Having concluded that all the admitted statements are defamatory, the legal position is that two rebuttable presumptions arise against the defendant: firstly, that the statements were unlawful and secondly, that they were made *animus iniuriandi*, i.e. intentionally with knowledge of their defamatory meaning and their unlawfulness (*Afshani's case supra* at para 24; *Unoovene's case supra* at 498J-499A). The onus on the defendant is a full onus which requires rebuttal on a balance of probabilities (*Afshani's case supra* 49C-D).

[33] In respect of the first statement set out in paragraph 3 of the plaintiff's particulars of claim the defendant's case is that the statements were not first made or directed to members of the public but that the statements were only made to members of the public after the fact of the extra-marital relationship between the plaintiff and the defendant's husband had become common knowledge. This is no defence to the allegations of the defendant's liability, as Ms *Indongo* on behalf of the plaintiff submitted. In *Tsedu v Lekota* 2009 (4) SA 372 (SCA) the Court dealt with this issue as follows (at 374F-H) in the context of the publication of defamatory statements in a newspaper (the omission and the insertion between square brackets are mine):

“[The appellant] was under the impression that a newspaper may publish defamatory statements with impunity if they have been originated by someone else. Well, journalists who keep Kelsey Stuart's *The Newspaperman's Guide to the Law* by their side know that that is not so from the following passage:

'A person who repeats or adopts and re-publishes a defamatory statement will be held to have published the statement. The writer of a letter published in a newspaper is *prima facie* liable for the publication of it but so are the editor, printer, publisher and proprietor. So too a person who publishes a defamatory rumour cannot escape liability on the ground that he passed it on only as a rumour, without endorsing it.'

[5] A newspaper that publishes a defamatory statement that was made by another is as much the publisher of the defamation as the originator is. Moreover, it will be no defence for the newspaper to say that what was published was merely repetition."

[34] The defendant pleaded in paragraph 2.3 that she "denies that the statement was made wrongfully or with an intension (*sic*) to injure the Plaintiff's reputation, because in essence the existence of the adulterous relationship between the Plaintiff and the Defendant's husband is the truth.'

[35] In the context of her plea there are several problems which arise for the Defendant. Firstly, while the truth of the defamatory statement may have a bearing on the quantum of damages, it is *per se* no defence to a claim for liability. The truth of the statement is only a defence if it is published for the public benefit. (*Yazbek v Seymour* 2001 (3) SA 695 (E) 701D-E; *Shikongo v Trustco Group International Ltd and Others* 2009 (1) NR 363 (HC) at 390C; *Tsedu v Lekota supra* 374H-I).

[36] If a defendant relies on the defence of truth for the public benefit as justification for the publication of a defamatory statement, she should plead it. *In casu* the defendant should therefore have pleaded that publication of the truth was for the public benefit and have pleaded facts on which this defence is based. In *Hardaker v Phillips* 2005 (4) SA 515 (SCA) 524H-I it was stated in the context of the defendant bearing the full onus to rebut the wrongfulness of the publication of defamatory statements that –

"A bare denial on the part of the defendant will therefore not suffice. Facts must be pleaded by the defendant that will legally justify the denial of unlawfulness. (*National Media Ltd v Bogoshi* 1998 (4) SA 1196 (SCA) (1999 (1) BCLR 1) at 1202H (SA).)"

[37] The plaintiff is entitled to know what case is to be met and may wish to replicate to the plea.

[38] It is in this context that the Court included the issue of whether the defendant's plea contains sufficient allegations to sustain a defence to the plaintiff's claim. The issue was not satisfactorily addressed by either party. Clearly the defence of truth and the public interest was not properly pleaded and therefore the attempts during testimony and during argument to rely on it to some extent as a defence cannot succeed.

[39] In regard to the statement contained in Exh "A" counsel for the defendant submitted that the document was prepared for the purposes of court proceedings and the defamatory statement contained therein is not unlawful. The problem with this submission is that it raises the defence of qualified privilege which was never pleaded. This is not the case which the plaintiff prepared to meet. In the circumstances the defendant cannot rely on it.

[40] I now turn to the issue of *animus iniuriandi*. Again it must be emphasised that the full onus is on the defendant to allege and prove the absence of an intention to injure the plaintiff. Also in this instance a bare denial will not suffice. The defendant's case is that she did not have the intention to defame the plaintiff because the allegations are essentially the truth and because the adulterous relationship was admitted by her husband.

[41] However, the evidence presented by the defendant did not prove on a balance of probabilities that the allegations about the relationship were true. The defendant attempted to present hearsay evidence about what her husband allegedly said about the relationship. These attempts were, correctly so, objected to by counsel for the plaintiff, as the defendant indicated that the husband would not be called as a witness.

[42] Even if one may argue that the evidence of what the husband said should be regarded as admissible, not to prove the contents of the statement, but to provide an explanation for her alleged *bona fide* belief that there was indeed an adulterous

relationship, I note that the evidence of what her husband told her, did not amount to an admission of any kind on his part. According to her he merely told her that there were rumours that he has an affaire with the plaintiff.

[43] The defendant also testified that '*as a mother I felt so bad for a daughter like her to do what she did if it is true*' [my underlining]. From this evidence it may be inferred that she was not even sure that the rumours were true.

[44] I must say that during the trial I had the impression that the defendant's case was very much at sea. There were numerous attempts to present evidence contrary to the pleadings and the terms of the pre-trial agreement; to raise defences not pleaded; and there was confusion between the issues raised in the defendant's plea and amended plea. This did not make a good impression on the Court.

[45] Having considered all the relevant aspects of the matter I am satisfied that the defendant has not acquitted herself of the full burden placed on her by the two presumptions in favour of the plaintiff. I therefore hold that the defendant's liability has been established on a balance of probabilities.

Quantum of damages

[46] As was stated in *Shikongo v Trustco Group International, supra*, at p398G-H: "The purpose of awards for damages is not to punish the wrongdoer, but rather to afford the victim personal satisfaction for an impairment of a personality right."

[47] Counsel for the defendant submitted that there is no evidence of any damages suffered because the plaintiff kept her employment with no evidence of the employees 'revolting' against her and because she did not present any evidence by a doctor or psychologist about emotional or physical effects of the defamation and the costs incurred for counselling. I do not agree with this submission. Although the plaintiff did not present such evidence as outlined by counsel, she testified about her standing in the community and about how she was injured in her self-esteem.

[48] In the *Shikongo* matter the Court explained the difference between the objective and subjective elements as follows (at 383A-F)(footnotes omitted):

“[32] The law of defamation was established in the Roman law. It did not much change under the Roman-Dutch law. The law of defamation considers the protection of the personality rights of a person. Reference is usually made in respect of the well-known triad of the Roman law regarding *injuria*, namely *corpus*, *fama* and *dignitas*. *Fama* concerns the reputation of a person while the other rights that were also protected concerned the body of a person (*corpus*) and his dignity (*dignitas*). These were separate rights. *Fama* and *dignitas* were separately protected:

'While the Courts identify, recognise and protect *corpus* (body) and *fama* (good name) as separate, delimited aspects of personality, views on the meaning and significance of the term *dignitas* vary considerably.'

It is recognised that *dignitas* has a wide meaning which is a collective term for all personality rights with the exception of the right to a good name and the right to bodily integrity. According to the well-known author Melius de Villiers *dignitas* should be widely interpreted and encompasses all aspects of the legally protected personality, except *corpus* and *fama*. On the other hand, defamation emphasises an objective element and the plaintiff's emotional reaction is of secondary importance.

[33] The infringement of a person's reputation (*fama*) must be objectively evaluated, while dignity has a subjective element. The essential difference is what others think of a person (reputation) and what he thinks of himself (dignity). Perhaps due to the English influence, dignity was sometimes described by the word 'character', while *fama* was sometimes described by the word 'honour'. In South African case law dignity and *fama* (reputation) have sometimes been used together and not separately with their own specific protections.'

[49] Muller, J continued to state (at 401A-B) in assessing the effect of the failure of the plaintiff in that case to testify:

“Although dignity has been used, as mentioned before, to include *fama* or reputation, the dignity aspect itself concerns the self-esteem of the claimant, namely what he thinks of himself and how that was injured. That entails a subjective element and can only be considered by the court if the evidence by the plaintiff is put before it. The court is unable to determine how his self-esteem in that regard was harmed or

injured. The plaintiff's failure to testify prevented the court from evaluating that aspect."

[50] From the above it is clear that the extent to which the plaintiff's reputation has been damaged is to be determined largely in an objective manner, whilst the measure in which her self-esteem has been injured involves an assessment by the Court based on testimony by plaintiff about she experienced the injury to her feelings and self-esteem.

[51] In my view it is not possible to come to any finding about who was the first person to spread the defamatory rumours about the plaintiff. Even if the defendant was not the first person to do so, the fact that she, as the wife of the plaintiff's alleged lover, made these statements in terms which convey certainty and which state the existence of the extra-marital relationship as an existing fact, must have lent credence to the statement. In fact, what might have at first been considered to be rumours would surely have taken on much more substance because they were repeated on numerous occasions over a number of years until summons was issued. Furthermore, by leaving messages with various employees at the plaintiff's place of employment that the plaintiff should stop sleeping with her husband, the defendant affirmed and re-affirmed the continued existence of an on-going adulterous relationship.

[52] These statements and messages must have caused the plaintiff's reputation much harm in the community, which is small. They also spread to the ears of her parents further away and undermined her authority as a manager and supervisor. It is very probable that these statements and messages would, by their very nature, have been just the kind of 'juicy story' that persons would like to gossip about and repeat, especially in such a small community as the village concerned. The defendant, as a senior member of that community could not have been unaware of this. I have no doubt that the defamatory statements significantly impacted on the plaintiff's good name. It certainly cost her several other close relationships. It is clear from the evidence presented that the plaintiff also suffered considerably in her self-

esteem and self-confidence at work. She has had to defend herself to her parents, whose esteem she clearly values.

[53] The plaintiff claims N\$60 000 as compensation for injury to her feelings and dignity and N\$40 000 for injury to her good name and reputation. However, I prefer to make a composite award of damages. In my view the total sum of N\$40 000 would suffice in the circumstances of this matter. The amount in damages awarded in cases such as these should, in my respectful view, be assessed conservatively. In this regard I have taken into consideration awards claimed and made in comparable cases in this jurisdiction. I do not intend discussing them, but for sake of completeness I mention the cases which I have considered: Shikongo's case, supra; Unoovene's case and the cases cited in paragraphs [16] and [17] of that judgment; the remarks made and the cases referred to in paragraphs [88] to [96] of *Trustco Group International Ltd v Shikongo* 2010 (2) NR 377 (SC).

Order

[54] The result is therefore as follows:

There shall be judgment for the plaintiff against the defendant for:

1. Payment in the amount of N\$40 000.
2. Interest thereon at the rate of 20% per annum from the date of judgment to the date of payment.
3. Costs of suit.

_____(Signed on original)_____

K van Niekerk

Judge

APPEARANCE

For the plaintiff:

Ms EN Indongo
of Conradie & Damaseb

For the defendant:

Mr Kaumbi
Instr. by BD Basson Inc