



**HIGH COURT OF NAMIBIA NORTHERN LOCAL DIVISION, OSHAKATI**

**JUDGMENT**

Case no: HC-NLD-CIV-ACT-DEL-2020/00103

In the matter between:

**ABRAHAM NANGOLO**

**PLAINTIFF**

and

**NAFTAL JACOB**

**DEFENDANT**

**Neutral citation:** *Nangolo v Jacob* (HC-NLD-CIV-ACT-DEL-2020/00103) [2021]  
NAHCNLD 40 (26 April 2021)

**Coram:** ANGULA DJP

**Heard:** 24 February 2021

**Delivered:** 26 April 2021

**Flynote:** The Law of Delict – Defamation.

**Summary:** The plaintiff sued the defendant wherein he claimed an amount of N\$40 000 as damages to his reputation – He 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 poisoning the members of his community – The defendant initially filed a notice to defend but thereafter repeatedly failed to comply with the rules and was a result

barred from filing his plea – Consequently, the plaintiff applied for default judgment. The plaintiff led oral evidence to prove his damages.

*Held;* that the test for defamatory statements is objective and concerns itself with the inferences drawn by a reasonable person that such statement caused damages to the plaintiff's reputation.

*Held;* on the evidence placed before court the plaintiff succeeded to prove that he had suffered damages as result of defamatory statements made by the defendant and was entitled to be awarded compensation

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### **ORDER**

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1. The defendant must pay the plaintiff an amount of N\$15 000 as damages.
2. Interest at the rate 20 per cent from date of judgment to date of final payment.
3. Costs of suit.
4. The matter is removed from the roll and regarded finalized.

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### **JUDGMENT**

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ANGULA DJP:

#### Introduction

[1] A person's reputation matters. Members of society put high premium on a person's good name and reputation. People therefore go to great lengths to protect their reputations. It is not a trivial matter when ones reputation is harmed. In this

matter, the plaintiff sued the defendant for alleged damages he suffered to his reputation.

### The parties

[2] The plaintiff is Mr Abraham Nangolo, an adult male person, residing at Ohakweenyanga village situated in Oshana Region, Republic of Namibia. The defendant is Mr Naftal Jacob, he is said to be residing at Oshipepe, also situated in Oshana Region, Republic of Namibia. The parties shall simply be referred to as plaintiff and defendant. The plaintiff was represented by Mr Greyling, throughout the proceedings.

### Brief background

[3] The plaintiff instituted this action for damages against the defendant. The defendant, Mr Jacob filed his notice of intention to defend after he was served with the summons personally by the Deputy-Sheriff of the court. As is customary, a case planning conference notice calling on the parties to file a case plan and to attend to the case planning conference hearing on the date indicated on the notice was issued. On 9 July 2020, the defendant filed a document from the Directorate of Legal Aid from what could be inferred that he wanted to inform the court that he had applied legal aid. On the same date, a default case plan order was issued setting out the timelines for the filing of pleadings.

[4] On the subsequent hearing date, the matter was postponed for a status hearing awaiting the outcome of the defendant's legal aid application. Thereafter the defendant failed to appear to inform the court of the status of his legal aid application. The court then postponed the matter to 30 November 2020 for a sanctions hearing. On 30 November 2020 the defendant again failed to appear whereupon the court ordered that the defendant was barred from filing pleadings in this matter and postponed the matter to 24 February 2029 for the hearing of the plaintiff evidence in the absence of the defendant and for default judgment.

### Pleadings

[5] The plaintiff alleges in his particulars of claim that on diverse occasions between December 2017 to July 2018 at or near Shipepe, the defendant made verbal statements that were wrongful and defamatory about him. Those statements were made to one Ileni Shehepo and to various members of the community. The statements were to the effect that the plaintiff was using his restaurant and his bar to distribute poison to the members of his community and further that the plaintiff was poisoning members of his community.

[6] The plaintiff alleges further that the statements were made with the intention of defaming him, and with the intention of injuring his reputation. He further alleges that the statements were meant to present him as a person who 'is dishonest, with loose morals, that he wishes to cause harm to members of the community, that he is engaged in criminal conduct'. Accordingly alleged that he suffered damages to his reputation and claimed compensation in the amount of N\$40 000.

#### The evidence

[7] The plaintiff, in support of his claim, testified in person and also called one Mr Shihepo as the second witness.

[8] Plaintiff confirmed during his testimony that not one of those alleged statements were made to him directly or in his presence. The plaintiff stated that he was informed by Mr Shihepo that statements about him were made by the defendant to Mr Shihepo that; he was poisoning members of his community by giving poison to people for them to poison other people, and that he was killing people with his poison. He further testified that those statements were also made to Ms Maria Mweutyakena who at the time was in the company of Mr Ileni Shihepo. Accordingly to the plaintiff Ms Mweutyakena has since passed away. It was the plaintiff further testimony that upon being informed by Mr Shihepo about the said statements, he and Mr. Shihepo attended at the police station to lay a charge against the defendant but was informed that the police do not deal with civil claims. It was his evidence that the statements made him feel 'bad', and that his community does not want him anymore in addition his family does not want him either. Furthermore his business operation has been adversely affected and has a result slowed down.

[9] Mr Shihepo testified as the second witness for the plaintiff. He testified that On 29 July 2018 he was told by the defendant that he had poison which was given to him by the plaintiff. The defendant is his uncle. That statement was made to him in the presence of Ms Maria Mweutyakena. According to him on that day he went to the plaintiff's business looking for a room to rent. He testified that he asked the defendant as to who told him that he was poisoning people. From there he went the police lay a charge but was informed by the police that they do not deal with such cases instead he should consult a lawyer. It was his evidence that his evidence that since than hates him.

### Submissions by counsel

[10] Counsel for the plaintiff submitted written heads of argument for which the court express its appreciation. Mr Greyling argues in his written submissions that the alleged defamatory statements apart from them having been made to plaintiff's tenants, they were widely circulated in the community. He further argues that due to the statements' defamatory nature the plaintiff has been ostracized by family, friends and the community. I now turn to consider the applicable legal principles.

### The Law

[11] At common law, the elements of the delict of defamation are therefore:

- (a) the wrongful
- (b) intentional
- (c) publication of
- (d) a defamatory statement
- (e) concerning the plaintiff.<sup>1</sup>

[12] O'Regan, AJA succinctly states the law on defamation in the matter of *Trustco Group International Ltd and Others v Shikongo*<sup>2</sup> that:

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<sup>1</sup> Neethling, J, J M Potgieter & P J Visser. 2006 *Law of Delict*, 5<sup>th</sup> Ed. Pp. 307-315. See also *Teek v Walters* (HC-MD-CIV-ACT-DEL-2016/02863) [2018] NAHCMD 376 (23 November 2018) para 44.

<sup>2</sup> (SA-2009/8) [2010] NASC 6 (07 July 2010). See also *Nahole v Shiindi* (I 3136/2012) [2014] NAHCNLD 53 (03 October 2014).

'The law of defamation in Namibia is based on the *actio injuriarum* of Roman law. To succeed in a defamation action, a plaintiff must establish that the defendant published a defamatory statement concerning the plaintiff. A rebuttable presumption then arises that the publication of the statement was both wrongful and intentional (*animo injuriandi*).'

### *What is publication?*

[13] Publication is defined as 'making something known to the community at large, exhibiting, displaying, disclosing, or revealing. Publication is the act of offering something for the general public to inspect or scrutinize. It means to convey knowledge or give notice.<sup>3</sup> An alternative definition of the word publication states that it is '... The action of making something public or generally known. With regard to defamation, it is the act of communicating a false statement to a third person.<sup>4</sup>

### Analysis of the evidence and law

[14] It is apparent from the above authorities that it is incumbent upon the plaintiff to establish on a balance of probabilities<sup>5</sup> that the defendant had published a defamatory statement concerning the plaintiff. 'Concerning' means in connection with or about.<sup>6</sup> From the elements, it appears that it is sufficient for the statements to concern the plaintiff that is to be about the plaintiff, there is no requirement for the statements to be made in the plaintiff's presence. In this case, it therefore does not matter that the statements were made to Mr Shihepo and the deceased and not directly to the plaintiff.

[15] It follows thus the plaintiff has established the requirement of publication. In this regard a rebuttable presumption arises that the publication of the statements were made both wrongful and with intention to injure the plaintiff. I have mentioned earlier that the defendant is not before court, therefore, all that was required of the

<sup>3</sup> Farlex *The Free Dictionary* retrieved 25 March 2021 from <https://legal-dictionary.thefreedictionary.com/Publication>

<sup>4</sup> The Law. Com *Dictionary* retrieved 25 March 2021 from <https://dictionary.thelaw.com/publication/>

<sup>5</sup> *Teek v Walters* (HC-MD-CIV-ACT-DEL-2016/02863) [2018] NAHCMD 376 (23 November 2018) para 48

<sup>6</sup> DEFINITION OF CONCERNING

plaintiff establish in order to succeed with his claim, is to discharge the burden as set out above.

[16] The next leg of the question is whether or not the publication was defamatory. It is settled law that he who alleges bears the burden of proof of such allegation to prove that allegation on a balance of probabilities in order to sustain his or her claim. (See Damaseb JP in *Dannecker v Leopard Tours Car and Camping Hire CC*).<sup>7</sup> In assessing what makes a statement defamatory, one needs to look at the meaning and understanding of such a statement from the perspective of a reasonable person (ordinary person) and the context under which the statement was made. After hearing the statement, what inference would a reasonable person have drawn? The test is objective, it does not concern itself with the sting alleged by the plaintiff or the conclusions the third person may have drawn. Would a reasonable person have drawn an inference that the plaintiff reputation injured by the allegation that he was poisoning people or giving third persons poison for them to poison other people?

[17] In answering the above questions, the court takes into consideration that the plaintiff is a business man and that the statement in question was made in relation to his business. In my considered view the statement that a business man is using his business to poison members of the community, injured he the plaintiff reputation which in turn adversely affected his business performance. There is no counter evidence that contradicts the plaintiff's evidence that the statements in question has resulted slowing down his business performance compare to its performance prior to the statements being made. I am therefore, satisfied that, the plaintiff has made out a case that the statements the defendant has injured his good name and reputation and has further adversely affected business performance. Having found as I did, I now proceed to consider what would be the amount should be awarded to the plaintiff as compensation for the damages he has suffered to reputation.

[18] Masuku, J in *Mbura v Katjiri (I 4382/2013) [2017] NAHCMD 103 (31 March 2017)* at para [69] remarked that the task of assessing the appropriate quantum for damages in any given case is a 'treacherous and engrossing task'. I fully agree with the Learned Judge's observation. The task is not a thumb suck exercise nor is it a walk in the park. The learned Judge then proceeded to consider the authorities on

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<sup>7</sup> (I 2909/2006) [2016] NAHCMD 381 (5 December 2016) at para 44-45.

the factors to be taken into account in the process of determination of the appropriate quantum for damages. He said:

'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.'<sup>8</sup>

[19] The evidence is that the statements were made to two people Mr Shihepo and Ms Maria Mweutyakena. Ms Mweutyakena has passed away, evidently, whatever she may have heard is buried with her. This leaves only Mr Shihepo to whom the statements were made. I take into account that the statements made the plaintiff feel 'bad'. This is understandable because nobody would be left unaffected after being accused of poisoning people and distributing poisons to third parties to kill members of his own community. I also take into consideration that his family no longer wish to be associated with him; they have distanced themselves from him. I further take into account that he has a result of the statements became an unwanted person in his community. There is no doubt that his reputation and self-respect has been injured.

[20] There is no evidence that the statements had travelled far and wide, but what would seem apparent is that there was some exposure which resulted in the plaintiff's business 'slowing down', to what extent that is, this court cannot assume in the absence of evidence to that effect.

[21] The plaintiff claims N\$40 000 in damages. I am of the view that on the evidence before court the amount appear to be excessive. I am of the considered an amount of N\$15 000 would be fair and reasonable to assuage the plaintiff's bruised reputation.

## Conclusion

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<sup>8</sup> Para 69 of *Mbura v Katjiri* (I 4382/2013) [2017] NAHCMD 103 (31 March 2017).



[22] I therefore make the following order:

1. The defendant must pay the plaintiff damages of N\$15 000.
2. Interest at the rate 20 per cent from date of judgment to date of final payment.
3. Costs of suit.
4. The matter is removed from the roll and regarded finalized.

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H ANGULA  
Deputy-Judge President

APPEARANCES:

PLAINTIFF:

J GREYLING

Of Greyling & Associates, Oshakati

DEFENDANT:

No appearance