



CASE NO.: I 1343/2008

IN THE HIGH COURT OF NAMIBIA

In the matter between:

MARKUS MANFRED FRANZ-FELIX MARIA VON JENEY

DE BOROSJENÖ

PLAINTIFF

and

DORIS KROPP

DEFENDANT

CORAM: MANYARARA, A J

Heard on: 02 June 2009

Delivered: 11 August 2009

---

### JUDGMENT

---

**MANYARARA, AJ:** [1] The plaintiff sued the defendant for damages for defamation arising out of an e-mail of and concerning the plaintiff addressed by the defendant to the Board of Directors of Harmony Mountain Village (Pty) Ltd and further circulated and published by electronic mail to a number of third parties.

[2] The particulars of claim allege that the e-mail read as a whole, alternatively certain passages of the e-mail, contain words which are *per se* defamatory of the

plaintiff, alternatively contain words which, in the context of the e-mail construed as a whole, are wrongful and defamatory of the plaintiff and intended to injure the plaintiff in his good name and reputation and in his feelings and dignity. It is further alleged that the words complained of were intended by the defendant and reasonably understood by the readers and recipients of the e-mail to mean, *inter alia*, that the plaintiff is a liar and swindler, dishonest, unprofessional and unfit to serve as a director of the Board of Directors of Harmony Mountain Village (Pty) Ltd.

[3] The allegations are denied. Pleadings were exchanged and the matter was set down for trial. However, on the trial date neither the defendant nor her counsel appeared and the Court was informed that the defendant had in fact left the country. In the circumstances, judgment for the plaintiff was granted on the issue of liability and the plaintiff proceeded to testify in proof of quantum only.

[4] The brief facts are these. The plaintiff is a duly registered and qualified professional engineer practising as such as the principal in Von Jeney Consultancy. At all relevant times he was the chairman of the board of directors of Harmony Mountain Village (Pty) Ltd ("Harmony") and a resident of the Harmony Mountain Village in the district of Windhoek (the "village").

[5] At all relevant times the defendant was a shareholder in the company and resident in the village. On 27 October 2007 the defendant addressed an e-mail of and concerning the plaintiff in the German language to the Board of Directors of the company and further circulated and published such e-mail by electronic mail to a

number of third parties, among them all 22 shareholders in the company. The plaintiff contends that the contents of the e-mail as translated contain matter which is defamatory of him by referring to him as a swindler and, *inter alia*, engages in fraudulent conduct, distorts the truth, is also lazy and perpetrates *mala fide* allegations.

[6] As I have said, neither the defendant nor her counsel appeared to defend or argue the defendant's case and no point will be served by exploring the defendant's pleadings denying the allegations.

[7] As Mr Smuts submitted on the plaintiff's behalf, there is a presumption of damage in our common law when it is established as happened in this case that a defamatory statement has been made: a causal connection between harmful conduct and the loss suffered by the plaintiff is accordingly presumed.

[8] The plaintiff testified that he was born in Germany in 1943 and came to Namibia with his parents in 1951. He is a citizen of Namibia and grew up at Otjiwarongo. He is an engineer and holds the degree of Bachelor of Technology. He has been in public service in the Ministry of Water Affairs and the Department of Works as well as the Ministry of Mines and Energy retiring as Deputy Director for Energy in charge of import and export licensing and oil industry pricing in the Southern African Customs Union (SACU). He was also involved in writing the Petroleum Products and Energy Act of 1990. He has served as a member of the Engineering Council of Namibia which has more than 800 members and is currently

serving his second term as the President of the Council. Further, he also serves on the Council of the Polytechnic of Namibia and the appointments to these positions were made by different Ministers of State.

[9] The plaintiff said that he felt deeply hurt and offended by the statements of and concerning him made by the defendant as they have no substance in them. He was also shocked by the allegations made which showed only that the defendant only had “an axe to grind” by defaming him. Indeed, the shareholders came to see him and enquired if Harmony had the problems alleged by the defendant’s statements.

[10] Mr Smuts submitted that the statements made by the defendant and, in the circumstances not denied, establish a very serious defamation of the plaintiff, impugning his honesty and integrity, given the repeated reference to fraud on his part, being a swindler and generally imputing dishonesty to him. He submitted that the ordinary meaning to be attributed to the statements (imputing dishonesty etc on the plaintiff’s part) is defined in the particulars of claim and the seriousness of the statements is compounded when considering the plaintiff’s professional standing in the community and his record of public service. The statements also lower and were intended to lower the plaintiff in the estimation of the shareholders of Harmony Mountain Village (Pty) Ltd containing imputations against his integrity and reputation.

[11] On the motives and conduct of the defendant, Mr Smuts submitted that it is aggravating in the award of damages, given the nature of the statements, the nature and extent of publication, the reputation and character of the plaintiff and the

persistence with the defamation that, after personal service of the summons, the defendant not only defended the matter but inter alia pleaded truth and public benefit and fair comment based on essentially true facts which were not sustained.

[12] The plaintiff claimed damages in the amount of N\$120 000.00 made up of N\$40 000.00 for injury to his feelings and dignity and N\$80 000.00 for injury to his good name and reputation. However, in his address citing recent cases Mr Smuts submitted that damages in the amount of N\$90 000.00 to N\$100 000.00 but certainly not less than N\$80 000.00 meets the justice of the case. See *JN Shidute and One Other v DDJ Investment Holdings CC and One Other* High Court Judgment Case No. (P) I 2275/2006 (not reported) and *MK Shikongo v Trustco Group International and Two Others* High Court Case No.

(P) I 3625/2006. No special order for costs is sought.

[13] The concession is well advised and will be implemented.

[14] In the result, the following order is made:

1. Judgment is entered for the plaintiff in the amount of N\$80 000.00 with interest on the amount at the rate of 20% per annum from the date of judgment to the date of payment.
2. The defendant shall pay the plaintiff's costs, including the costs of one instructing and one instructed counsel, on the party and party scale.

---

**MANYARARA, J.**

ON BEHALF OF THE PLAINTIFF

Instructed by:

Adv. Smuts,S.C

LorentzAngula Inc.