

**IN THE HIGH COURT OF SOUTH AFRICA  
(EASTERN CAPE – PORT ELIZABETH)**

**CASE NO.: 183/2011**

In the matter between:

**ROBERT MATZNER  
RAY DE WET  
BERYL DE WET**

**First Plaintiff  
Second Plaintiff  
Third Plaintiff**

And

**EROL SMITH  
JACKIE SMITH**

**First Defendant  
Second Defendant**

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**JUDGMENT**

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**BESHE, J:**

[1] Plaintiffs instituted an action against the defendants claiming damages for defamation. Each plaintiff claims payment of R120 000.00 for damages. Pleadings having closed and the trial date having been set, plaintiff requested particulars for trial upon failure by the defendants to reply to the request for particulars for trial. Plaintiff's approached the court for an order directing the defendants to reply to their request for particulars. The order was accordingly made directing the defendants to reply within ten days of the service of the order. With no reply forthcoming, the plaintiffs once again approached this court for the dismissal of defendants' defence and for judgment to be granted in their favour. That is the application that is serving before me. There was no appearance on behalf of the defendants when the application was heard. The application was therefore not opposed.

[2] This matter arose under the following circumstances: The plaintiffs were amongst the trustees for the time being of the Parkhurst Body Corporate which manages the affairs of the Parkhurst Townhouse Complex, situated in

Lorraine, Port Elizabeth. The defendants who are husband and wife were residents within the Parthurst Townhouse Complex. On or about the 29 July 2010 the defendants wrote a letter to the tenants and owners of the said Townhouse Complex. The letter was distributed by placing a copy thereof in the letter box of each of the approximately 27 units.

[3] The letter in question will be quoted in its entirety with parts thereof that are alleged to be defamatory highlighted. The letter reads as follows:

Thursday 29 July 2010

To all Tenants and Owners of Parkhurst Townhouse Complex

RE: "Barking Dog"

Good Day

Please take 5 minutes of your day to read this note and the accompanying documents as it might affect you as well.

We are the tenants of No. 19 Parkhurst and have a family pet called Buster.

About 3 months ago we started getting letters via our agent about our dog which according to "someone" barks incessantly.

Regardless of our attempts to inform these people that it has not been our pet they have continued to harass us and our neighbours the Crossman's about our pet.

They have now gone as far as getting lawyers involved in the matter as we refuse to remove our pet.

What has recently come to light is quite a shocking unfolding of events:

Our Body Corporate has not handled the situation in the correct manner at all and we feel that all who live at Parkhurst should know how they go about their business.

We were made to believe that a special meeting had been held where votes were cast and complaints received about our pet. None of this actually happened, well besides the pathetic complainants letters they "claim" to have received.

2 of the Trustees had NEVER seen our supporting letters and did not even themselves hear our pet.

Mr F J Brandt of number 11 who is a trustee on the body corporate received a phone call whilst on holiday in Cape Town and was convinced by another body corporate member to vote against us on the issue. And why would he not trust what another body corporate member says – so we cannot blame him on that issue. Neither has he seen the letters supporting us on the issue. He was very surprised to say the least when he was informed of all the latest events. We were told all body corporate members had received a copy of all letters involved.

S Nixon at number 13 has also never been to an actual meeting on this matter and has also not seen the letters. Once again also a trustee.

Makes one wonder does it not????

The other trustees who “voted” - Rose works all day so how does she know our dog barks.

The other trustee that “voted” – Beryl does not even live in the complex so how would she know?

The other trustee that “voted” – Beryl’s sister does not even live in the complex so how would she know?

Seems something is amiss when people that don’t even live in our community can vote on something which affects us all.

One then has to wonder how many other issues raised in the “meetings” are just vetoed by those that feel it would serve their interest. No one is there to question them on our behalf. We just take for granted that these are honest people.

**Well have we learnt our lesson now! How can one trust people that do not even follow their own processes?**

We feel strongly that all should know about this matter as you might have had to deal with the body corporate on a separate matter and been treated the same as us. **In the most dishonest manner possible!**

We may only be tenants, but we have lived here 6 years and treated our home as our own. **Who is going to stand up for the tenant in this place? We are always the first to be blamed – tenants. If someone goes wrong it's the tenants. Only if you are an owner are you sort of safe here at Parkhurst.**

**People it is time the truth behind the body corporate comes out.**

**“Please stand with us on this issue as it is not a barking dog issue, but an “HONESTY” issue with the people you trust to run your complex.**

Regards

Errol and Jacque Smith

[4] Plaintiffs contend that parts of the letter complained of were intended and accordingly understood by the tenants and owners of Parkhurst Townhouse Complex to mean that: They (plaintiffs) are dishonest people; have a complete and dishonest regard for the process of the Parkhurst body corporate; in discharging their fiduciary duties as trustees, they acted without honesty; the lack of probity on their part has placed the tenants on the Complex in danger and that they are corrupt and morally bankrupt.

[5] Plaintiffs' contend that as a result of the publication of this letter their feelings and reputation were injured. According to the third plaintiff, Ms Beryl De Wet they were shocked and dismayed that in the letter the defendants asserted that they do not do things according to the regulations. They regarded it as the biggest insult that they were said to be dishonest and not trustworthy and felt this was an affront to their integrity. Ms Beryl De Wet is a retired mathematics teacher and 65 years old. According to her the defendants refused to apologise. Had they apologised the matter would have been put to rest.

[6] Ms De Wet's evidence was confirmed by the first and second plaintiffs.

[7] It is trite that defamation is a remedy which affords the right to claim damages to a person whose personality rights have been intentionally impaired by the unlawful act of another. These rights include right to reputation/good name and dignity.

[8] The approach to be adopted in determining a defamation claim was said by **Harms DP (as he then was) in *Le Roux v Dey* 2010 (4) SA 210 at 213 D-G** to be the following:

“It is well established that the determination of whether a publication is defamatory and therefore prima facie wrongful involves a two-stage inquiry. (I use the word ‘publication’ to include a pictorial representation such as a photograph.) The first is to determine the meaning of the publication as a matter of interpretation and the second whether that meaning is defamatory.

To answer the first question a court has to determine the natural and ordinary meaning of the publication: how would a reasonable person of ordinary intelligence have understood it? The test is objective. In determining its meaning the court must take account not only of what the publication expressly conveys, but also of what it implies, ie what a reasonable person may infer from it. The implied meaning is not the same as innuendo, which relates to a secondary or unusual defamatory meaning that flows from knowledge of special circumstances. Meaning is usually conveyed by words, but a picture may also convey a message, sometimes even stronger than words.

It may be accepted that the reasonable person must be contextualised and that one is not concerned with a purely abstract exercise. One must have regard to the nature of the audience. In this case the main target was the school children at a particular school, but it also included at least teachers.

A publication is defamatory if it has the ‘tendency’ or is calculated to undermine the status, good name or reputation of the plaintiff.”

[9] *In casu*, applying the principles laid down by *Harms DP* in the matter that is cited above, the words complained of by the plaintiffs, regard being had to their natural ordinary meaning are capable of being understood by a

reasonable person of ordinary intelligence to mean that: The plaintiffs are dishonest people. They disregard the process of Parkhurst body corporate in discharging their duties as trustees. That their actions have placed the tenants of the said complex in danger. I am satisfied that this in turn would hurt their feelings and injure their dignity and reputation. That they are therefore entitled to an award for damages to compensate them for the harm suffered by them.

[10] As far as the quantum is concerned, although the plaintiffs had initially sued the defendants for payment of R 120 000.00 to each of the plaintiffs in argument before me it was submitted that the plaintiffs were each entitled to an award for R20 000.00 which the defendants should be ordered to pay jointly and severally the one paying the other to be absolved.

[11] Having had regard to all the factors relevant in the matter as well examples of awards granted in the cases that I was referred to by *Mr Gajjar* for plaintiffs; I am of the view that an amount of R10 000.00 will be an appropriate award to each plaintiff.

**[12] Accordingly judgment is granted in favour of plaintiffs. The defendants are ordered to pay each of the three plaintiffs an amount of R10 000.00 as and for damages, jointly and severally, the one paying the other to be absolved. The issue of costs was left to my discretion. In my view this is an appropriate case where costs should be awarded on the magistrate's court scale. Accordingly plaintiffs are awarded costs on scale that is applicable in the Magistrates' Courts.**

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**N G BESHE**

**JUDGE OF THE HIGH COURT**

**APPEARANCES**

For Plaintiffs	ADV: Gajjar
Instructed by	RUSHMERE NOACH INC. 5 Ascot Office Park Conyngham Road Greenacres PORT ELIZABETH Ref: Ms J Theron/md/MAT21884 Tel.: 041 – 399 6700
For Defendants	NO APPEARANCES
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Date Reserved	20 March 2012
Date Delivered	28 March 2013