**IN THE HIGH COURT OF SOUTH AFRICA**

**KWAZULU-NATAL LOCAL DIVISION, DURBAN**

Case no: **D11759/2017**

In the matter between:

**ANILDUTH SINGH** **PLAINTIFF**

and

**CAXTON CTP PUBLISHERS AND PRINTERS** **FIRST DEFENDANT**

**THE RISING SUN COMMUNITY NEWSPAPER (PTY) LTD** **SECOND DEFENDANT**

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**Coram**: Mossop J

**Heard**: 2, 3 September 2024

**Delivered**: 13 September 2024

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**ORDER**

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The following order is granted:

1. The defendants are not liable to the plaintiff arising out of the article published in the Chatsworth Rising Sun on 16 February 2016.
2. The plaintiff shall pay the defendants' costs, such to be taxed on scale B.

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**JUDGMENT**

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**MOSSOP J**:

[1] This is an action in which the plaintiff claims that he has been defamed by an article (the article) that appeared both in the paper and digital editions of a free community newspaper published by the second defendant. The article reported on the plaintiff's arrest on a charge of sexual assault, his overnight detention, and his subsequent release into bail. It also featured an interview with the complainant, who alleged that she had been sexually assaulted by the plaintiff. The community newspaper is called the 'Chatsworth Rising Sun', Chatsworth being a suburb of Greater Durban. It is not in dispute that the first defendant co-owns the newspaper with the second defendant.

[2] Where I refer to 'the newspaper' in this judgment, I refer to the paper version of that publication.

[3] When this trial was called before the senior civil judge, the parties agreed that the issues of liability and quantum would be separated. The matter was then allocated to me to determine the issue of liability.

[4] The essence of the plaintiff's case, as set out in his particulars of claim, is that he was arrested on 8 February 2016 on a charge of sexual assault, was detained overnight and was released into bail the next day, 9 February 2016. On 16 February 2016, the second defendant published the article. The plaintiff pleaded that the publication of the article was in breach of s 154(2)*(b)* of the Criminal Procedure Act 51 of 1977 (the Act) and states further that:

'In breach of Section 154(2)(b) of the Criminal Procedure Act 51 of 1977 and with the deliberate intention of injuring the reputation of the Plaintiff, the Defendant caused the article (Annexure "A") hereto to be printed, published and distributed in the greater Chatsworth, Northdene, Queensburgh, Durban and surrounding areas and which tabloid is very widely read by the general public.'

[5] The plaintiff pleaded that the article was also published online and was thereafter posted by third parties onto social media platforms such as Twitter (or 'X' as it is now known) and was, consequently, widely read. The plaintiff pleaded further that the article was deliberately misleading because it did not mention that he had

been charged for an 'alleged' sexual assault. This, so the plaintiff further pleaded, meant that:

'To the ordinary reader the article created the impression that the Plaintiff had sexually assaulted the complainant and [was] accordingly guilty of an offence.'

[6] The plaintiff's particulars of claim do not isolate and identify which parts of the article are defamatory of him. Reference is made only to the article as a whole. Ordinarily, a plaintiff alleging defamation must set out the words used by a defendant which are alleged to be defamatory of him.[1] Failure to plead such words, or their equivalent, may render the particulars of claim vague and embarrassing.[2] It is, however, acceptable to simply put up the whole document of which complaint is made without stating which parts are regarded as being defamatory. In such circumstances, and this is one, the court considers whether the whole document was defamatory of the plaintiff.[3]

[7] From a reading of the particulars of claim, there is no suggestion that any innuendo is relied upon by the plaintiff. I clarified this with Mr Ramdhani SC, who appeared for the plaintiff. He confirmed that the plaintiff's case was that the article in its entirety was per se defamatory of the plaintiff and that the plaintiff did not rely on, or allege, any innuendo or sting attaching to the article.

[8] The defendants delivered a joint plea in which they denied that they breached s 154(2)*(b)* and denied that they intended to injure the plaintiff's reputation. In amplification thereof, they pleaded further that publication of the article was not wrongful nor that they acted with animo injuriandi, as they were unaware of any falsity in the details of the article and did not publish it recklessly. The defendants' plea went on to aver that publication of the article was objectively reasonable and denied that the article is defamatory of the plaintiff.

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[1] *International Tobacco Co of SA Ltd v Wollheim and others* 1953 (2) SA 603 (A); [1953] 3 All SA 20 (A) at 613-614.
[2] *Deedat v Muslim Digest and others* 1980 (2) SA 922 (D); [1980] 2 All SA 80 (D) at 928.
[3] *Sindani v Van der Merwe and others* 2002 (2) SA 32 (SCA); [2002] 1 All SA 311 (A).

[9] The existence and publication of the article are accepted and are not in dispute. It appeared on page three of the newspaper on 16 February 2016. The headline to the article, and the first three paragraphs of the article, read as follows:

'**Principal released on bail following sexual assault case**

After being arrested on charges of sexual assault and spending one night in the Chatsworth SAPS holding cells, E[…] Primary School principal, Anil Singh, was released on bail of R1,000[4] on Tuesday.

The well known principal appeared in the Chatsworth Magistrates Court briefly, and was represented by attorney Logan Govender, who said he cannot speak on behalf of his client as they have not conversed regarding the details of the case.

He faces one charge of sexual assault laid against him by a female teacher at the school.'

[10] The article was embellished with a small photograph of the plaintiff and with a much larger photograph of members of a small group of placard-wielding persons from the local community who staged a protest outside the court building on the day that the plaintiff appeared, urging the court not to release the plaintiff on bail.

[11] The article covered approximately half of page three of the newspaper, which is published in tabloid form, and was comprised of three columns of print, with the photograph of the protesting group placed to the right of the last column and the small photograph of the plaintiff placed below the group photograph. A portion of the first column, the entire second column, and a portion of the third column were devoted almost exclusively to a lengthy verbatim quotation from the complainant who had preferred the criminal charge against the plaintiff. Despite the apparent sensitivity of what she alleged,[5] the complainant was not reticent in expressing her thoughts, and feelings, about what had allegedly happened to her. She explained the trauma that she experienced and confirmed that she would not let the plaintiff:

'… get away with what he has done.'

The article ended with a further quote from concerned parents of children at the plaintiff's school expressing their concern that the plaintiff was still at the school while he was being investigated for such a serious allegation.

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[4] The amount of bail was incorrectly reported in the article to be R1 000. The plaintiff stated in evidence that it was, in fact, fixed in the amount of R2 000.

[5] A copy of the magistrate's judgment acquitting the plaintiff formed part of the trial bundle utilised before me. From that judgment, it is apparent that the complainant alleged that the plaintiff had fondled her breasts and had put his finger between the cheeks of her buttocks.

[12] The digital edition was identical in content to the article in the newspaper, save in two respects. In the digital edition, the article was laid out differently. The columns of print were done away with, and the narrative was presented in horizontal lines of print. The second difference was that the size of the photograph of the plaintiff was increased so that it was, more or less, equivalent in size to the photograph of the protesting people.

[13] The plaintiff commenced with the leading of evidence and, indeed, was the only witness to testify at the truncated trial, for the defendants immediately closed their cases without calling any evidence after the plaintiff had finished testifying and had closed his case.

[14] The plaintiff confirmed that he was a primary school principal and was arrested on 8 February 2016 on a charge of sexually assaulting the complainant, who was a junior teacher at the school of which he was then the head teacher. Following his arrest, he spent the night of 8 February 2016 in the holding cells at the Chatsworth police station and appeared before the Chatsworth Magistrates' Court the next day, when he was formally released into bail.

[15] The plaintiff testified that the article was published by the second defendant in its edition of the newspaper dated 16 February 2016, which was exactly a week after he was released into bail. The fact that the newspaper describes itself on its front page as being 'weekly' may explain the delay in the reporting of the story. At the time when he was released into bail, the plaintiff testified that he had not been called upon to plead to the charge that he faced. He was only required to plead on 28 August 2016 and exactly a month later, on 28 September 2016, he was acquitted after a trial at which he, the complainant, and other witnesses testified.

[16] Vindicated and emboldened by his acquittal, the plaintiff testified that he went to the offices of the second defendant two days after his acquittal. The purpose was to demand that the second defendant print a further article confirming his acquittal.[6] He testified that he did not make an appointment to see the editor of the newspaper

[6] A much bigger newspaper than the Chatsworth Rising Sun, namely 'The Post', did run a story reporting that the plaintiff had been acquitted.

but arrived at the second defendant's offices unexpected and unannounced. Fortunately, the editor was present, and he personally received the plaintiff, speaking to him for a few minutes. The plaintiff handed a letter that he had personally written to the editor, Mr Thambiran, who acknowledged that he had received the letter by signing a copy thereof. The letter was an awkwardly worded request from the plaintiff to the second defendant for a further article to be published by it, explaining that he had been acquitted. While the editor apparently appeared receptive to the idea, the plaintiff testified that he never heard from him again.

[17] The plaintiff testified further that on 7 October 2016, he had written to the reporter who had written the article, Ms Yoshini Perumal, and drew to her attention the fact that he had been acquitted. His purpose, again, so he testified, was to get the second defendant to inform its readers through a further article that he had been exonerated. He received no response to this email.

[18] Four days later, on 11 October 2016, the plaintiff sent a further copy of this email to the reporter. As before, he received no response to it.

[19] The plaintiff testified that he accordingly directed a further email to the second defendant on 21 October 2016, again requesting a clarificatory article to be published. He received no response to this email either.

[20] On 28 November 2016, the plaintiff sent an email to the first defendant, the co-owner of the newspaper. In that email, he highlighted the first defendant's own published code of ethics, the press ombudsman's code of conduct, and the provisions of the Act that allegedly prohibit an accused person from being identified in certain circumstances before he has been called upon to plead to a charge. As with all his other emails, he received no response to this email.

[21] The final issue testified to by the plaintiff was that the digital version of the article, first published on 16 February 2016, remained online on the second defendant's website until the second defendant finally removed it, on the demand of the plaintiff's attorneys, on 15 May 2024.

[22] Under cross-examination by Mr Reddy, who appeared for the defendants, the plaintiff fared reasonably well. He did not contradict himself and it appeared that he is an intelligent and sensitive man. However, the most significant aspect of his cross-examination was when Mr Reddy asked him to identify which parts of the article were untrue. The plaintiff was unable to indicate that any part of the article was untrue and was compelled to concede that it accurately narrated the facts of the matter. The only inaccuracy that he was able to identify was, as previously mentioned in this judgment, that the article reported that bail had been fixed in the amount of R1 000, when it had, in fact, been fixed at R2 000.

[23] To successfully prosecute the delict of defamation, a plaintiff must establish its essential elements, which are that there was the wrongful and intentional publication of a defamatory statement concerning himself.[7] There are only two of those five requirements in dispute in this matter: the defendants admit that they intentionally published the article and that its subject matter was the plaintiff's criminal tribulations. What is in issue is whether, in so acting, the second defendant acted wrongfully and whether the article was defamatory of the plaintiff.

[24] In *Le Roux v Dey*,[8] Harms JA stated that:

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

Thus, the publication of a defamatory statement is prima facie wrongful. But a statement does not have to be false to be defamatory. Hefer JA confirmed this in *National Media Ltd v Bogoshi*,[9] when he noted that:

'… the falsity of a defamatory statement is not an element of the delict, but that its truth may be an important factor in deciding the legality of its publication.'

[25] The defendants have pleaded that the article contained no falsehoods and was not defamatory of the plaintiff. In attempting to establish that it was defamatory of him, the plaintiff appeared to premise his claim on the alleged breach by the second defendant of s 154(2)*(b)* of the Act, which was extensively relied upon by the

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[7] *Khumalo and others v Holomisa* [2002] ZACC 12; 2002 (5) SA 401 (CC) para 18 (*Khumalo*).
[8] *Le Roux and others v Dey* [2010] ZASCA 41; 2010 (4) SA 210 (SCA); [2010] 3 All SA 497 (SCA) para 8 (*Le Roux*).
[9] *National Media Ltd and others v Bogoshi* 1998 (4) SA 1196 (SCA) at 1218E-F *(Bogoshi)*; cited with approval in *Khumalo* para 18.

plaintiff in formulating his particulars of claim, with reference to that section appearing in three separate paragraphs of the particulars of claim. That section reads as follows:

'No person shall at any stage before the appearance of an accused in a court upon any charge referred to in section 153(3)[10] or at any stage after such appearance but before the accused has pleaded to the charge, publish in any manner whatever any information relating to the charge in question.'

The plaintiff contended throughout his evidence, and it was argued at the end of the trial on his behalf, that the provisions of this section meant that he could not be named until such time that he had pleaded.

[26] From this evidence and approach and from a reading of the plaintiff's particulars of claim, it appeared that the plaintiff contended that the alleged non-compliance with the provisions of s 154(2)*(b)* by the second defendant in itself established that he had been defamed. That proposition, however, does not appear to me to be correct for two reasons.

[27] Firstly, s 154(2)*(b)* creates criminal, not civil, liability. A breach of the section attracts the penal provisions of s 154(5) of the Act.[11] Secondly, the section does not have the meaning contended for by the plaintiff. It does not refer to a prohibition of the disclosure of the identity of the accused person: it refers to the disclosure of particulars of the charge. That, it seems to me, is intended to offer some form of protection - not to the accused person, but to the victim of an alleged sexual assault. The protection given to the victim is, presumably, to prohibit that person's name from

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[10] The charges referred to in s 153(3) are the following:
'*(a)* any sexual offence as contemplated in section 1 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007, towards or in connection with any other person;
*(b)* any act for the purpose of furthering the commission of a sexual offence as contemplated in section 1 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007, towards or in connection with any other person; or
*(c)* extortion or any statutory offence of demanding from any other person some advantage which was not due and, by inspiring fear in the mind of such other person, compelling him to render such advantage.'

[11] Section 154(5) of the Act reads as follows: 'Any person who publishes any information in contravention of this section or contrary to any direction or authority under this section or who in any manner whatever reveals the identity of a witness in contravention of a direction under section 153(2), shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding three years or to both such fine and such imprisonment if the person in respect of whom the publication or revelation of identity was done, is over the age of 18 years, and if such person is under the age of 18 years, to a fine or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment.'

being disclosed in the particulars of the charge preferred. My understanding of s 154(2)*(b)* is that it is accordingly not intended to benefit the accused person charged with the offence but is intended to protect the victim. The fact that editors of newspapers have generally interpreted it to mean that the identity of the accused person cannot be revealed is of no consequence and does not make it so.

[28] Support for this viewpoint may be found in s 335A of the Act, which was enacted because of the judgment in *S v Zululand Observer (Pty) Ltd and another*.[12] That section expressly limits the prohibition to the identity of the victim and not the identity of the alleged perpetrator. It is perfectly understandable why this may be the case. To encourage victims of sexual offences to come forward and report what had happened to them, it may be necessary to shield them from any publicity that may arise from the prosecution of those offences.

[29] The plaintiff's reliance on the section as having any relevance to his claim of defamation accordingly seems to me to be misplaced. Mr Ramdhani ultimately acknowledged that non-compliance with the section does not in itself automatically result in an act of defamation. It was a concession properly and fairly made, in my view. Which is not to say that such a disclosure can never be defamatory but any assessment of that would obviously depend on how the disclosure was made and the words employed in doing so.

[30] When considering the content of a written article which is alleged to be defamatory, a court should give it the natural and ordinary meaning which it would have conveyed to the ordinary reasonable reader reading it. In *Mark v Associated Newspapers Ltd*,[13] the court observed that:

'Hypothetical reasonable readers should not be treated as either naïve or unduly suspicious. They should be treated as capable of reading between the lines and engaging in some loose thinking, but not as being avid for scandal. The court should avoid an over-elaborate analysis of the article, because an ordinary reader would not analyse the article as a lawyer or accountant would analyse documents or accounts. Judges should have regard to the impression the article has made upon them themselves in considering what impact it would

[12] *S v Zululand Observer (Pty) Ltd and another* 1982 (2) SA 79 (N).
[13] *Mark v Associated Newspapers Ltd* [2002] EWCA Civ 772 para 11, quoting from *Gillick v Brook Advisory Centres & Jones* [2001] EWCA Civ 1263 para 7.

have made upon the hypothetical reasonable reader. The court should certainly not take a too literal approach to its task.'

[31] Those are the remarks of an English court, but they have been followed in this country.[14] Our courts have also expressed themselves on the approach a court should take in such cases, stating that a court should discard:

'… its judicial robes and the professional habit of analysing and interpreting statutes and contracts in accordance with long established principles. Instead it dons the garb and adopts the mindset of the reasonable lay citizen and interprets the words, and draws the inferences which they suggest, as such a person would do.'[15]

[32] Yet, having adopted this approach, the court is required to acknowledge that there is a limit to the allowances that it can make in this theoretical exercise:

'A defamatory meaning should not be attributed to an isolated part of a newspaper report if the rest of the report would show that it is not justified. A claimant should not be permitted to base his case upon the reaction of readers who do not bother to read the whole of the article even although a part of it has attracted their attention precisely because of its potential to lower the esteem in which society holds him… Why should the writer or publisher of an article the whole of which is intended to be read and, if read, would plainly not be defamatory be held liable for defamation because there may have been lazy or careless readers who chose to focus only upon a particular sentence in it.'[16]

[33] It has already been established that the plaintiff contends that the article as a whole is per se defamatory of him. That triggers a two-step inquiry by the court. The first step is to determine the ordinary meaning of the article. In doing so, the court must adopt an objective approach to the matter. What was intended by the author of the article, and what other people believed the article to mean, are not relevant to the inquiry because it is the court that must objectively determine what the article meant. The second step is to determine whether the article is, in fact, defamatory of the plaintiff.

[34] In order to assess how a reasonable person of ordinary intelligence would have understood the article, it is obviously necessary to consider the article in the

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[14] *Tsedu and others v Lekota and another* [2009] ZASCA 11; 2009 (4) SA 372 (SCA) para 13.
[15] *Independent Newspapers Holdings Ltd and others v Suliman* [2004] 3 All SA 137 (SCA) para 19.
[16] Ibid para 20.

newspaper. It commenced with the headline, which is notably in a larger font than the rest of the print in the article. That, after all, is what makes it a headline. The headline to the article records that the plaintiff was released on bail after a sexual assault case. That is broadly, and in summary, what happened.

[35] The plaintiff pleaded in his particulars of claim that the headline to the article did not mention that it was 'alleged' that he had sexually assaulted the complainant. The word 'alleged' does not appear in the headline to the article nor, for that matter, in the article itself. But given the fact that it is obvious from the article itself that the criminal proceedings against the plaintiff were in their infancy, and that they had yet to be concluded, I do not regard the absence of that word from the article as being significant. The average reader would have understood that nothing had been unequivocally proven against the plaintiff. He was merely alleged to have committed the offence in respect of which he had been arrested.

[36] A headline is a summation of the article to follow and cannot encapsulate the entirety of all the allegations that comprise the substance of the article. A headline may itself be defamatory even though the article to which it is linked is unobjectionable.[17] In this matter, I am of the view that there is a reasonable link between the headline and the article and that the headline is not itself defamatory.

[37] In the body of the article, it was reported that the plaintiff had been arrested, spent a night in custody and had then been released on bail the next day. All of that was perfectly correct, according to the plaintiff. Most reasonably informed members of the community would appreciate that bail is usually sought, and granted, immediately after, or reasonably soon after, the arrest of an accused person. There is no report, or suggestion, in the article that the plaintiff had been asked to plead to the charge that he faced or that the criminal proceedings had been terminated with his conviction.

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[17] *English and Scottish Co-Operative Properties Mortgage and Investment Society Ltd v Odhams Press Ltd and another* [1940] 1 All ER 1 (CA).

[38] That this must be so is reinforced by the fact that it was reported that the plaintiff 'faces' one charge of sexual assault preferred against him by the complainant. The use of the word 'faces' suggests something ongoing, in this case, ongoing criminal proceedings, that have not yet been finalised. The average reader would be aware that there are two sides to every story and that until a court has definitively ruled on an accused person's guilt, what has been stated of that person by his accusers are simply unproven allegations.

[39] It is so that the complainant was quoted in the article on her experience, and she mentioned at the end of a long verbatim quotation that she would not let the plaintiff get away with what he had done. That phrase, while potentially carrying a pejorative meaning, simply reinforced the fact that the proceedings in the magistrates' court had not been concluded, nor that the plaintiff had been convicted of anything. Had the plaintiff already been convicted, he would not have got away with anything. The finalisation of the criminal proceedings had therefore yet to occur, and no finding had been made about the plaintiff's guilt. The average reader would have understood this simply to be the complainant's side of the story. The reporter writing the story had offered the plaintiff's attorney the opportunity to state his side of the story but the opportunity had been declined.

[40] In my view, the article was balanced and went no further than simply reporting the facts, bereft of commentary by the second defendant. I do not discern the intention to defame in the tone and style of the article. In my view, the article simply meant to the average reader that the plaintiff had been arrested and charged with sexual assault, had appeared in court and had been released into bail. He was simply part of the criminal justice system which would ultimately determine his fate. It went no further than that and did not suggest that he was guilty or that he had probably committed the act for which he was charged. And all that the article alleged, was true, as conceded by the plaintiff under cross-examination.

[41] That being the case, the article was not, in my view, defamatory of the plaintiff. Reference has already been made in this judgment to the fact that an article need not be untrue to be defamatory. But, as was stated by Hefer JA in *Bogoshi*, the

truthfulness of the article will have an important influence in determining the legality of its publication.

[42] Court proceedings are public proceedings in this country, and it is to the benefit of society that what happens in those proceedings be reported. The Constitutional Court has observed that:

'Seeing justice done in court enhances public confidence in the criminal-justice process and assists victims, the accused and the broader community to accept the legitimacy of that process. Open courtrooms foster judicial excellence, thus rendering courts accountable and legitimate.'[18]

[43] With this country's progressive constitution, there is a dichotomy between an individual's rights to privacy[19] and the maintenance of human dignity[20] on the one hand and the right of the press to freedom of expression[21] on the other hand. The press has a vital role to play in disseminating information concerning what happens in the courtrooms of this country.[22] Interestingly, Harms JA stated in *Le Roux* that:

'In determining whether a publication is defamatory regard must be had to the person who was allegedly defamed. What may be defamatory of a private individual may not necessarily be defamatory of a politician or a judge. By virtue of their public office they are expected to endure robust comment, but that does not imply that they cannot be defamed or should not be entitled to turn to courts to vindicate unjustifiable attacks on their character. This is to a lesser extent also true of teachers. They must expect to be the subject of robust comment and the butt of jokes by scholars, but, once again, there is a line that may not be crossed because they, too, have the right to reputation and dignity, which must be protected.'[23] (Footnote omitted.)

[44] Where a teacher, in this case a head teacher, is required to appear in court, that is a matter of some significance given the respected and important position that head teachers hold in our communities. The public is entitled to be informed of this.

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[18] *Shinga v The State and another (Society of Advocates, Pietermaritzburg Bar, as Amicus Curiae); O'Connell and others v The State* [2007] ZACC 3; 2007 (4) SA 611 (CC) para 26.
[19] Section 14 of the Constitution.
[20] Section 10 of the Constitution.
[21] Section 16 of the Constitution.
[22] *Van Breda v Media 24 Ltd and others* [2017] ZASCA 97; 2017 (5) SA 533 (SCA).
[23] *Le Roux* para 11.

In doing so, it is important that the press reports fairly and accurately. In my view, the second defendant did precisely that.

[45] It is significant that in all his interactions with the second defendant, virtually all of which were in writing, the plaintiff never once complained about the fact that the article had been written at all or that it was unfair to him in what it stated. What he sought was a second article to publicise his acquittal. This can only be because the article was not unfair towards him and correctly reported what had befallen him. He simply wanted the end of the story to be told by the second defendant.

[46] I therefore conclude that the article was not defamatory of the plaintiff and that its publication was not unlawful. It follows that the plaintiff's action must fail and that the defendants are not liable to him. As costs follow the result, the plaintiff must pay the costs of the defendants. It would be fair, in my view, considering the complexity of the matter, to order those costs to be taxed on scale B.

[47] I accordingly grant the following order:

1. The defendants are not liable to the plaintiff arising out of the article published in the Chatsworth Rising Sun on 16 February 2016.
2. The plaintiff shall pay the defendants' costs, such to be taxed on scale B.

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**MOSSOP J**

## APPEARANCES

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| Counsel for the plaintiff: | Mr D Ramdhani SC |
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