

CASE NO : 716/2000

**IN THE HIGH COURT OF SOUTH AFRICA
(BOPHUTHATSWANAPROVINCIAL DIVISION)**

In the matter between:

NICO JAGGA

PLAINTIFF

and

P E KHABELE

DEFENDANT

MMABATHO

APPLICATION

FOR THE PLAINTIFF:

ADV L J LEWIES

FOR THE DEFENDANT:

ADV Z CAMRODIEN

DATE OF HEARING:

16 OCTOBER 2002

DATE OF JUDGMENT :

5 DECEMBER 2002

J U D G M E N T

LEEUEWJ:

1. The Plaintiff has made an application for amendment of the Particulars of Claim in all three claims brought against the Defendant.

2. In the Notice of Amendment, Plaintiff seeks to amend the Particulars of Claim to

the summons by substituting the following: (the underlined portions are the proposed amendments.):

3.1 Claim A, paragraph 3 (the main paragraph).

“ On or about 28 February 2000 and at or near Mafikeng, the Defendant addressed a letter to President Mbeki, the President of the Republic of South Africa, **which was received by and/or published to the President and/or officials attached to his office and/or officials attached to the Premier of the North West Province** of and concerning the Plaintiff that *inter alia*.”

3.2 Claim B : paragraph 2 (the main paragraph)

“ On or about the 26 April 2000 and at or near Mafikeng, the Defendant stated in a letter dated 26 April 2000 to Premier P S Molefe of the North West Provincial Government, **the contents which was published to the Premier and/or officials of the Office of the Premier** of and concerning Plaintiff that :”

3.3 Claim C : paragraph 2 (the main paragraph)

“ On or about 30 November 1999 and/or 28 February 2000 and at Mmabatho, the Defendant caused certain notes to be send (*sic*) to Premier P S Molefe of the North West Provincial Government, **the contents which was published to the Premier and/or officials of the Office of the Premier** of and concerning the Plaintiff that *inter alia*.”

4. In his pleas to:

- 4.1 Claim A: the Defendant, *inter alia*, “admits that on or about 28 February 2000 and at Mafikeng, he sent the letter, marked “A” and annexed to the Particulars of Claim to President Mbeki”;
- 4.2 Claim B: the Defendant, *inter alia*, “admits that on or about 26 April 2000 and at Mafikeng, he sent the letter marked “B” and annexed to the Particulars of Claim, to Premier P S Molefe of the North West Provincial Government;”and
- 4.3 Claim C: the Defendant denies *inter alia* “that the notes, annexed to the Particulars of Claim and marked “C” and “D” respectively, were sent to Premier P S Molefe of the North West Provincial Government, either on the date alleged or at all.”

5.The amendments to the pleadings were brought at an advanced stage of the proceedings in that the Plaintiff had already completed his evidence in chief and was cross-examined thereon.

6.1 In the case of *Ciba-Ceigy (Pty) Ltd v Lushof Farms (Pty) Ltd en ‘n Ander* 2002 (2) SA 447 (SCA), which was referred to by Ms Camrodien in her submissions, the following factors or considerations were held to be applicable in an application for amendment at a later stage of the proceedings:

- (i) The Applicant has to prove that he did not delay his Application after having become aware of the necessity to amend;
- (ii) that he must explain the reason for the amendment and show *prima facie* that he has a triable issue, that is a dispute which will probably be established by the evidence sought to be introduced or which is viable or

relevant to the issues which can be proved by the evidence foreshadowed;

6.2 The Court further expressed the view that: “Although, in the case of a timeous and less disruptive application, it will often not be appropriate to require the Applicant to indicate how he proposes to establish his amended case, an applicant’s prospects of succeeding with his new cause will properly be an element in the exercise of the Court’s discretion where the application is moved at an advanced stage of the proceedings. The greater the disruption caused by an amendment, the greater the indulgence sought and, accordingly, the burden upon the Applicant to convince the Court to accommodate him”. See Headnote p 450 B - C.

7.No reasons have been advanced by the Plaintiff for the amendment but it is evident that the amendment seeks to introduce omissions relating to the element of publication of the alleged defamatory words. I do not wish to deal with the merits of the case at this stage.

8.This aspect, on publication, was canvassed by counsel for Defendant during cross-examination and, to an extent, covered the aspects proposed to be amended. The amendments do not seek to introduce a completely new cause of action. The proceedings had not reached an advanced stage to an extent that the Defendant would be prejudiced. The Plaintiff may be recalled for the purpose of cross-examination.

9.I accordingly make the following order:

“ (a) Plaintiff/Applicant is granted leave to amend the Particulars of Claim in terms of paragraphs 1, 2 and 3 of the “Plaintiff’s Notice of Intention to Amendment” (sic) dated 20

August 2002 and filed with the Registrar on the
20 August 2002; and

- (b) Plaintiff/Applicant is ordered to pay costs
occasioned by this Application.”

M M LEEUW
JUDGE OF THE HIGH COURT

PLAINTIFF’S ATTORNEYS	:	NIENABER & WISSING
DEFENDANT’S ATTORNEYS	:	THLAPI & MOOKELETSI