



IN THE HIGH COURT OF SOUTH AFRICA
BOPHUTHATSWANA PROVINCIAL DIVISION

CASE NO.:CA 18/2007

In the matter between:

OLGA LOTTERING

APPELLANT

and

JOHN ABRAHAM ADONIS

RESPONDENT

CIVIL APPEAL

MOGOENG JP & LANDMAN J

DATE OF HEARING : 29 AUGUST 2008

DATE OF JUDGMENT : 02 OCTOBER 2008

FOR THE APPELLANT : DR SENATLE

FOR THE RESPONDENT : ADV ZWIEGELAAR

JUDGMENT

LANDMAN J:

Introduction

- [1] This is an appeal against a judgment of a Magistrate for the District of Vryburg. The learned Magistrate found that the appellant had defamed the respondent and awarded the respondent R50 000 damages and costs.
- [2] The respondent, as plaintiff, sued the appellant, as defendant, in the Magistrate's Court at Vryburg for R50 000. The respondent alleged that on 1 July 2005 at the Vryburg Hospital the appellant said to Ms Linda Van Coller and Mrs Anna Louw words to the effect that he is "low class", is "with no education" and that he is a dictator in the church and everyone has left the church as a result of his actions.
- [3] The appellant filed a plea and a counterclaim. The learned Magistrate heard the evidence and found in favour of the respondent. She awarded him R50 000 damages and his costs. She dismissed the counter-claim for lack of evidence.
- [4] The appellant noted an appeal against the whole of the judgment. But Mr Senatle, who appeared for the appellant, confirmed, what was obvious from his heads, that the appeal is restricted to the claim in convention.

The facts

- [5] Mrs Louw (Ouma Louw) aged 93 was at home. She was chronically ill. She became sicker. Her granddaughter Mrs Anna Louw and her husband summoned an ambulance. Ouma Louw was brought to the Vryburg Hospital. She was taken to the casualty section and placed on a bed. She was examined by the appellant, the chief nursing sister, at the hospital.

- [6] There were no beds available in the hospital save for a bed without a mattress. The appellant, who said she was acting on a doctor's instruction, told Mrs Anna Louw to take Ouma Louw home as she cannot be admitted to the hospital as there was no bed available. At this stage a means to transport Ouma Louw home was sought. Ms Van Coller, who was present, phoned the respondent to assist them with transport.
- [7] The respondent agreed to assist them. He went to the hospital. When he learnt that there was no bed for Ouma Louw he was outraged and, by his own admission, angry. The appellant said, in his presence, to Mrs Anna Louw that she should have brought Ouma Louw to the hospital earlier in the day. She would now have to take care of Ouma herself. On his own version the respondent turned to the appellant and said to her: "This is not the way to treat a patient. The family brought Ouma to hospital and you say they must treat her at home so why did they brought her to hospital (sic)" (pg 5). He says he did not swear at the appellant nor disparage her.
- [8] The respondent went off to complain to the district manager. He did not find him, so he decided to call on the Matron at her home. While he was there, the Matron had a telephonic discussion with the appellant. The respondent did not hear what was said.
- [9] The respondent was subsequently told by Ms Van Coller what the appellant had said about him. Ouma Louw died within hours of returning home. The respondent attended the funeral of Ouma Louw. The appellant alleged, in her counter claim, that he made a defamatory statement, at the funeral, concerning her. This claim was dismissed. As the decision is not on appeal it is unnecessary to deal with it.
- [10] Thereafter the respondent wrote a letter of complaint to the Medical Superintendent

of the hospital. The letter (in its original form), dated 3 July 2005, reads:

“Re: **COMPLAINT OF MIS-BEHAVIOUR OF SR. OLGA LOTTERING AND HER REFUSAL TO RENDER PROPER MEDICAL SERVICES AND TO ADMIT OUMA GRIET LOUW 93 YEARS OF AGE RESULTING IN HER DEATH 3 HOURS LATER.**

I am a councillor at the Naledi Municipality and a community leader in Coldridge.

On Friday, 01 July 2005, between 8 & 9pm, I was requested by Miss Linda van Koler to come and fetch her grandmother Mrs Griet Louw at the Vryburg Provincial Hospital due to the fact that sister Lottering refuses to treat and admit her.

Upon arrival at the hospital, I found sister Lottering in a rude manner addressing the family of Ouma Louw requesting them to take her home and to take care of her themselves. She also said: **“Hier is nie beddens in die Vroue Saal nie en vir wat bring julle die Ouma so laat? Ek het klaar met Dr Dam gepraat, hy sê sy moet huistoe gaan.”**

I then intervened and told sister Lottering that, before making such suggestions, she must take the circumstances of the family in consideration, and that she has no right to refuse medical services to the old lady, who did not eat for two days. **She then turned to me and asked who the hell I was to prescribe to? She then called me a low class with no education and that I must mind my own business. She said that she was educated and of higher stand.** I left the hospital and went to matron Thlabanelo's house and informed her of the situation, whereupon she phoned sister Lottering at the hospital. Another version was given to her.

Ouma Louw died at 3am, Saturday 02 July 2005.

As public servants we owe the Louw and van Koler families an explanation of how we could allow the Batho Pele policy to have failed them. Ouma Louw was subjected to the worst form of human rights abuse and not even our Constitution were able to save her. It clearly shows that individuals in the form of sr. Lottering are above section 27(1) of the Bill of Rights and that not even Chapter 10 of the Public Administrations Act Sec 195, Subsec 1a and 1e could stop her.

I would urge you to consider this complaint in a very serious light and do hope on your prompt respons.

Yours in health

John Adonis

Cell. 0728774293
Mananger

CC: Mr Motlhabane (District Health

- [11] Ms Linda Van Coller confirms that she arrived at the hospital with Ouma Louw and the other members of the family. She could see that the appellant had "an attitude"; as if the hospital belonged to her and she did not want to assist Ouma Louw. She also did not want to assist a woman who had been teargassed saying she was drunk.
- [12] The appellant took Ouma Louw's blood pressure. She asked why the granddaughter did not bring Ouma Louw in during the day. Ouma Louw became ill at 10:00 and was brought to the casualty division at 19:00. She also said there was no bed for Ouma Louw and that there was no doctor at that time, ("teen daardie tyd nie").
- [13] Ms Van Coller, called the respondent, a fellow member of the Independent Democratic party, to assist with transport.
- [14] The respondent arrived at the hospital. The appellant said or repeated what has been recorded above. So Ouma Louw must be taken home. The respondent said to her that this is not the way to speak to patients. Appellant said to him that he has no say in the matter. He replied that "he is a community leader and part of the community so how can she say this"? The respondent did not swear at her.
- [15] The respondent left the hospital to complain to the Matron about the fact that the appellant would not admit Ouma Louw.

- [16] While the respondent was away, the appellant said she did not obtain her matric by jumping through the window. She knows her job. People should not come and tell her how to do her work. If she says something is like this, then it is. She said he wants to tell her he is a community worker and he should not come and tell her about that “low class work” (later Ms Van Coller said “low class community work”). She also said he did not have an “education”.
- [17] The Matron phoned the appellant. Ms Van Coller listened to the appellant’s side of the conversation. Ms Van Coller said the appellant cried on the phone and said that the respondent just wants to dominate (“heers”) at the church and he is also like this at the church, therefore the church is empty because of him ie people stay away because of him.
- [18] The respondent returned to the hospital and he and Ms Van Coller left. Ouma Louw and Anna Louw remained behind. On the way home Ms Van Coller told the respondent what the appellant had said about him.
- [19] The appellant testified that she was a chief professional nurse. She has a degree in nursing and a degree in management. She had 18 years experience. She was on night shift in the casualty section and in charge of the hospital complex. When she came on duty she found Ouma Louw there. She spoke to Anna Louw and said:

“So I asked what was the problem with the ouma as I was (inaudible) the treatment (inaudible) the ouma. Then she said that the old lady was ill from 10:00 and my question to her was why bring her so late whereby we could have treated her earlier. Then she said they brought the ouma to the hospital in case the ouma should die at home so that they do not have to struggle making a death certificate. Usually when we make death certificates at the hospital it is not (inaudible) patient, then we refer them to the police station, so that is the argument that I had with her. So I examined the patient, I treated her, I gave her the

Maxilon for the vomiting, I explained to her that there was no beds, empty beds in the hospital. And I went to report to Dr Maringa who was on call with me and Dr Maringa said they must just wait so after (inaudible) then he will come and examine the ouma. It is when I was still talking to the patient that Mr Adonis entered the consultation room, accompanied by another female that I saw for the first time there. Mr Adonis, I have been explaining to the relative that there is no beds, we are waiting for doctor to see what we can do. It is then that Mr Adonis asked me do I know the rights of patients. I told Mr Adonis I know everything, he started screaming at me, telling me, sorry for the abusive language, "julle fokken geleerdheid het fokkol met my te doen nie." That is what Mr Adonis said in the consultation room. I asked Mr Adonis why is he swearing at me, he said "dit is die enigste fokken taal wat julle susters verstaan." I explained to Mr Adonis he is a leader, he is a councillor, he is a politician, why is he swearing at me, he said to me I must "fokkof." Mr Adonis was performing in the passage, screaming, it was visiting hours, he was telling people "waar kry julle die fokken dom suster," is she really a sister, he was querying my qualifications but it was visiting hours. I ignored him, I went back to Mr Maringa at the theatre, explained to Dr Maringa that there is a certain gentleman that is swearing (inaudible) abusive language (inaudible). When we got back Mr Adonis was gone. Dr Maringa examined the patient, he said to the relatives that there is no beds, it is late in the night. The relatives they stood, they came (inaudible) the patient can come back in the morning. Dr Maringa's son, he is (inaudible) hospital to the administration, to discharge a patient, I do not have the authority to admit a patient or discharge a patient. Dr Maringa saw the patient, examined the patient and then he went back to theatre."

Pages 57 – 58 line 12 – 22 vol 3 of the record.

- [20] She denies that she uttered the words complained of to Mrs Van Coller or the Matron. She did not say that the woman who had been teargassed was drunk.
- [21] Matron T T Tlhabanelo testified. The respondent came to her house on 1 July 2005 at about 21:30. She went on to say:

"The evening? --- In the evening yes. (Inaudible) he said he had come to inform me he has a problem that he has encountered at the hospital, that he had brought a lady (inaudible) they brought her to the hospital and that at the hospital there was now a problem about the admission of the patient because (inaudible) to that (inaudible) he had an encounter (inaudible) that Sister Lottering was refusing to admit the patient and

she was rude, he said it in Afrikaans.”

Page 91 line 14 to 20.

- [22] He was emotional and disturbed about something or fed-up. The Matron was asked:

“Now what make you felt he was emotionally disturbed and fed-up? ---
The way he described Sister Lottering’s attitude at the hospital.

How did he describe it? --- (Inaudible) quote.

Yes, quote. --- Am I allowed to do so?

Yes, of course, --- He said “sy is (onhoorbaar) sy was onprofessioneel
en sy (onhoorbaar) en sy is ’n dom suster” (inaudible) described
(inaudible)”

Page 92 line 11- 17.

- [23] She phoned the appellant. The appellant told her what the respondent said of her: “sy dink die is haar fokken hospital en sy is onprofessioneel.” The appellant used strong words. She said the respondent is bossy. She did not mention the church. “Hy was net so hard.” There were people in the corridors, there were people moving about and “hy het hard gepraat.”
- [24] The respondent did not mention anything about education to the Matron. The appellant was unhappy when she spoke to the Matron. The Matron advised both parties to put their complaints in writing.
- [25] I may mention that both parties subsequently lodged complaints. It was put to her under cross-examination that she was biased towards the respondent. She replied:

“Can I say something? You know I was with Mr Adonis, that is what you see as body language, we talked and I was over the phone with Sister Lottering, there was no body. I could not detect exactly what the situation was. And to correct the situation here, because we are friend, we are not friends, we could be colleagues and she is also my (inaudible) at work, we are working for the same government, for the same department, for the same yes department. Not necessarily because she is a friend of mine and I know both these people, none of them could super see (sic) the other one according to how I know them. Although I have known her more on the professional side, how we function at work, Mr Adonis I would know him because we live in the same neighbourhood, he has been to my house before this incident and once he had assisted me with a problem of transport, so there is not this click, this friendship between us I will not say I am defending this one or I am defending that one, that is how I see it.”

Page 103 line 5 – 19.

[26] The appellant was ordered by the Department to attend an inquiry before the Senior Executive Committee of the Hospital. The appellant was given a verbal warning about the noise that was made in the patients’ environment. It was not acceptable for the appellant to have told the family to take Ouma Louw home without her being seen by a doctor. She was transferred to another section but not because of the respondent’s complaint.

[27] Dr Maringa was on duty at the Vryburg Hospital on the night in question. He said:

“I was on call, I think it was actually in theatre around 20:00, ja somewhere around that time. And I think it was actually in theatre you know, having taken a patient for a Ceasarian Section for obstructed labour, the patient could not deliver, so I was with Dr Dann on the night and whilst we were busy in theatre Sister Lottering came through, you know, usually there is a barrier line, she was standing there and then she reported that there is a family that has actually brought an old granny on the night with a history of vomiting thrice, I think once the previous day and I think twice. So she was quite disturbed because now apparently there was an exchange of words, you know but what basically she said you know she was abused verbally by one of the persons who actually brought the old lady to the hospital.

And that is the plaintiff in this case, Mr Adonis? --- That is what exactly what she said.

But did you saw this verbal abuse? --- No I did not see it because I was in theatre, you know and then I just told her you just need to calm down because I could not leave the patient in theatre you know, with an open cut and I will attend to the patient when I come out, out of theatre which I did.

Okay so you came out of theatre and then what happened? --- Ja, I came out of theatre, I cannot remember the exact time but probably past 21:00 ja, I cannot remember the exact time. So I went to theatre and when I got to theatre the old lady was lying on, there are two beds in casualty, she was lying on the extreme left bed and there were two ladies with her and I actually interviewed the ladies as to what is their main complaint of the lady or why did they bring the old lady to the hospital that particular night and that is when they told me that she had actually vomited you know thrice and she, the history was that the old lady has been bedridden for a month and with this chronic illness in a sense, but the main complaint was that because of the vomiting, that is why they brought her to the hospital.

And then what happened? --- I actually do most of the talking, Sister Lottering was quiet and then I examined the lady, the old lady, found out what she was chronically ill, bedridden and when she was not dehydrated then you know, and there was no any form of distress. And then I explained to the two ladies the current situation of the hospital, that there were no beds to accommodate her on that particular night, you understand, and thus we treated her symptomatically of Maxilon, you know to abate the vomiting. But when now, when I was there the old lady was not vomiting now.”

Pages 121 - 122 line 5 – 17.

[28] He only saw the patient once. He was asked about her illness. He replied:

“She was terminally ill, she was at her last? --- What I am saying chief is that even if that patient, you were to admit her at Barag or Groote Schuur it would not change the course of events, you understand? She would die even in the hospital or out of the hospital, you would not change the course of events, definitely not.”

To help her to regain her strength? --- one, she was not dehydrated you understand? You put a drip when a patient is dehydrated.

Ja but what was the cause of death then? --- No, it is just chronic illness.

Is there nothing you can give to help her with this chronic illness? --- Chief you treat a patient based on what she was presenting with, you understand? You cannot make a patient that is 93 being bedridden for one month to walk again, I mean that is not possible.”

Pages 127 and 128 to 129 lines 17 – 21 and 20 – 2.

- [29] Mr Senatle was content to argue the appeal on the basis that, if the words were found to have been uttered, the appellant defamed the respondent. The learned Magistrate accepted, after careful inquiry, the evidence of Ms Van Coller. She found her to be a credible, unbiased witness. The learned Magistrate also accepted the credibility of the respondent. She did not believe the appellant and was sceptical as regards the Matron's evidence. Dr Maringa's evidence was accepted.
- [30] One aspect, which was not raised during the trial nor was anything made of it during the appeal, relates to the respondent's letter of complaint. In his letter he alleges that the defamatory words were uttered to him. He does not say that he was informed by Ms Van Coller that she heard them and conveyed them to him. If the words were uttered in his presence during the confrontation between him and the appellant then it is possible that when she spoke to the Matron she might have left out of account the words relating to the appellant's involvement in the church. Of course, Ms Van Coller says she overheard the appellant saying this. But Ms Van Coller's evidence-in-chief is then also in conflict with the respondent's version in the letter of complaint.
- [31] Nevertheless the learned Magistrate, in my view, correctly disbelieved the appellant. I would in any event be reluctant to interfere with a credibility finding by a trial court. On the other hand the probabilities are that the appellant was confrontational and showed indignation, with a measure of justification, as regards the appellant's decision to send Ouma Louw home. He would have come across as indignant and officious or "bossy". It is probable that he used swear words regarding the appellant. The version of the Matron supports this.

- [32] In the result, I am, of the opinion that the appeal against the finding that the appellant defamed the respondent should be dismissed.
- [33] I turn to consider the quantum of the damages. The learned Magistrate awarded R50 000 damages. This was the amount claimed. The learned Magistrate did not explain how she arrived at this amount. In any event the pertinent facts, which I have identified, are significantly different to those on which the Magistrate must have determined the quantum. Consequently this court is at liberty to decide upon the quantum afresh.
- [34] J Neethling, **Persoonlikheidsreg** 4th edition at 205-207 provides some guidance to the relevant considerations. He says:

“Die faktore wat die omvang van die genoegdoeningsbedrag – verswarend of versagtend – kan beïnvloed, is wyd uiteenlopend van aard.

In die algemeen stel ’n onbehoorlike motief of ‘malice’ aan die kant van die verweerder, soos in ’n geval waar hy bewus van die onwaarheid van sy lasterlike bewerings was, ’n verswarende omstandigheid daar. Ander faktore wat ’n soortgelyke resultaat kan hê, is die besondere krasheid of beledigende aard van die bewese laster; roekelose of onverantwoordelike gedrag aan die kant van die verweerder; die omvangryke verspreiding van die gewraakte publikasie; die posisie en aansien van die eiser; die feit dat die lasterlike bewerings herhaal is; die krenkende of benadelende gevolge van die laster; en die verweerder se volharding in ontkenning van aanspreeklikheid.

Omstandighede wat aan die ander kant weer versagtend werk, is die swak reputasie, karakter of gedrag van die eiser; die waarheid van die lasterlike aantygings; provokatiewe optrede aan die kant van die eiser; die geringe omvang van die gewraakte publikasie; ’n apologie deur die verweerder; onnodige vertraging by die eiser om die lasteraksie aanhangig te maak; en die feit dat die laster vir ’n geruime tyd reeds in omloop is.”

- [35] The following facts and circumstances are relevant as regards the quantum:

- (a) The respondent is matriculated.
- (b) He began as a printer but now owns his own printing business.
- (c) He is a councillor and member of the local Catholic Church's council.
- (d) He is also a town councillor, member of school committees and is active in supporting the community of Vryburg.
- (e) He is related in some way to the appellant.
- (f) The parties belong to the same congregation of the Catholic Church.
- (g) The defamatory words were uttered during the course of a confrontation during which the appellant denigrated and swore at the respondent.
- (h) Publication of the defamatory words was limited to Ouma Louw, Anna Louw and Ms Van Coller.
- (i) Ms Van Coller was distressed to hear the words but it is improbable that her respect for the respondent has diminished.
- (j) The appellant did not call the respondent a dictator – but rather someone who dominated or controlled things.
- (k) The appellant did not say that the respondent was “low class” but that he did “low class community work.” Although defamatory, it is less defamatory than the words pleaded.
- (l) The remark that the appellant is not learned should be seen against the fact that the respondent has professional experience and two degrees and he was challenging her competency.
- (m) The appellant was not honest in her account of the events and has not apologised to the respondent.
- (n) The respondent was wrong to blame the appellant for the death of Ouma Louw. His letter stating this was copied to a number of persons.

[36] Taking all the circumstances into account, in particular, the limited publicity, the

context of the wrong committed, the degree of defamation, the emotional climate, the actions of the parties and the relationship between them, I am of the view that a sum of R5 000.00 would be adequate compensation.

[37] In the result

1. The appeal succeeds to the extent that the amount of quantum is reduced.
2. The order of the Magistrate is amended by substituting “Eis van R5 000 (Vyf Duisend Rand) toegestaan” for the words “EIS TOESTAAN SOOS WAT DIT GEËIS IS”.
3. No order is made as regards the costs of the appeal.

A A LANDMAN
JUDGE OF THE HIGH COURT

I agree

M T R MOGOENG
JUDGE PRESIDENT

ATTORNEYS:

FOR THE APPELLANT	:	STATE ATTORNEYS
FOR THE RESPONDENT	:	SMIT & STANTON