



IN THE HIGH COURT OF SWAZILAND

Civ. Case No. 1248/93

In the matter between:

ALFRED G. SHONGWE

Plaintiff

and

SWAZI OBSERVER

Defendant

CORAM:

Hull, C.J.

FOR PLAINTIFF

Mr. Shabangu

FOR DEFENDANT

No Appearance

Judgment

(26/8/94)

The plaintiff, Mr. Shongwe resides at Mhubhe in the Manzini region and the defendant, the Swazi Observer, prints and publishes a newspaper of the same name with a wide circulation in this country.

On Monday 7th June 1993, the Swazi Observer published as its leading story in that day's edition of its newspaper an article which has given rise to this action for damages for defamation.

The article was published very prominently on the front page. It concluded, still in a quite conspicuous way, on the second page. I can illustrate this to an extent by setting out verbatim, as follow, the two pages with the initial headline (though its is necessary to look at the newspaper itself, and especially the front page, to appreciate how prominently it featured):

"STUDENTS STRIKE OVER SPECIAL PROJECT FUNDS

"Students of Mhubhe High School in the Manzini Region went on strike on Friday over the alleged disappearance of money they contributed for a certain special project that has not been disclosed to The Swazi Observer.

"The students alleged that their contributions were paid to a member of the community instead of being deposited to the bank as it was the procedure with the building and school funds.

"They pointed out that the school authorities demanded them to contribute E50 per student.

"The decision to go on strike was taken after the students, upon inquiry, were told their contributions had been handed over to a certain Mr. Shongwe who built himself a clinic with the money.

"The students after having discovered the construction of the clinic, held a meeting on Thursday afternoon where they resolved to go on strike the following day, if the school authorities did not furnish them with reasonable explanation on their contributions.

"During the meeting all the school prefects were given the task of seeking an audience with the headmaster, Mr. Bernard Dlamini.

"They wanted to know in particular why the funds had to be paid to Mr. Shongwe yet other school funds were paid directly to the bank.

"The students also demanded an explanation on why the headmaster refused to join school soccer team in the Coca-Cola football tournament yet they were required to pay E20 sports fee per student.

"The students also bitterly complained about the use of a whip by the headmaster when disciplining them instead of using a stick. The students said the use of a whip by Mr. Dlamini, had resulted in some students abandoning school.

"However, the headmaster and Mr. Shongwe, had a meeting with the students on Friday and a compromise was reached and it was agreed that he will pay the joining fee for the Coca-Cola football tournament.

"He further told the students that he was not aware that a number of students have since abandoned school for fear of being beaten with a whip.

"Mr. Dlamini told the students that he will no longer use the whip when disciplining students.

"However, Mr. Shongwe, when asked by students to give an account regarding the clinic which he is building, stormed out of the meeting without answering the queries.

"The strike was however, suspended on condition that Mr. Shongwe be summoned to the school today to account for the money in his custody."

Mr. Shongwe's complaint is that the average reader would infer from the ordinary meaning of the article that he had fraudulently and improperly misappropriated to his own private use, to build a clinic for himself, funds that he had received on behalf of the school. Accordingly he seeks E20 000 general damages for injury to his dignity and reputation.

His claim is unopposed.

Publication of the article is proved. On the face of it, the report is in my judgment defamatory in the way alleged by Mr. Shongwe.

The ordinary reader, in my view, would construe the article as reflecting adversely on Mr. Shongwe's moral character.

No defence has been advanced by the newspaper. Mr. Shongwe is accordingly entitled to succeed: De Waal v. Ziervogel 1938 AD 112.

He is entitled to recover damages for the wrongful done to his reputation and to consequent injury to his feelings : Die Spoorband v. S.A.R. 1946 AD 999.

As to the measure of damages, it is a serious matter to accuse a person wrongly of misappropriating funds. The newspaper describes itself as one that "serves the nation", and is well known to be one of those in daily circulation throughout Swaziland. Conspicuous publicity was given to the article.

The newspaper chose to make it the leading story for the day, under the very prominent headline. It is also given prominence where it continues on the second page. There is no evidence that an apology has been rendered.

In these circumstances, I regard an award of E16 000 as fair and reasonable. There will be judgment for that amount accordingly and interest at the rate of 8 percent from today, with costs.



DAVID HULL
CHIEF JUSTICE



IN THE HIGH COURT OF SWAZILAND

Civ. Case No. 1909/94

In the matter between:

EAST RAND MERCHANTS CC

Applicant

and

THOMAS CARL MOORE KIRK

Respondent

CORAM:

Hull, C.J.

FOR RESPONDENT

Mr. Nkosi

FOR APPLICANT

Mrs. Currie

Judgment

(3/11/94)

This is an application by Mr. Kirk to set aside an order made by me, on 28th October 1994, on the application of the company, for the release of its truck and trailer which Mr. Kirk had detained, and for costs.

The circumstances are set out at length in my order today dismissing with costs Mr. Kirk's application to attach the rig to found or confirm jurisdiction in an action he intends to bring that is related to this matter.

It is not in dispute that the rig belongs to and, more particularly, was in the possession of the company - in Swaziland - when Mr. Kirk detained it physically, without having obtained any court order to do so.

If the affidavits filed on Mr. Kirk's behalf are read carefully, it can be seen that no good reason for detaining the rig is disclosed. No basis is shown for rescinding the order, which was obtained on an application by mandament van spolie.

The present application is therefore dismissed with costs. The order of 28th October 1994 is confirmed.

D. Hull

DAVID HULL

CHIEF JUSTICE