

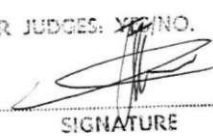
**NORTH GAUTENG HIGH COURT, PRETORIA  
(REPUBLIC OF SOUTH AFRICA)**

DELETE WHICHEVER IS NOT APPLICABLE

(1) REPORTABLE: ~~YES~~/NO.

(2) OF INTEREST TO OTHER JUDGES: ~~YES~~/NO.

(3) REVISED.

DATE 31/05/2011 SIGNATURE 

31/05/2011  
CASE NO: A598/08

In the matter between:

**STEPHANUS JOHANNES PAULUS KRUGER** Appellant

And

**PIETER M BOTHA** Respondent

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**JUDGMENT**

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**MATOJANE J**

[1] The appellant was the unsuccessful plaintiff in a defamation action he instituted against the Respondent. The court *a quo* refused leave to appeal and the Supreme Court of Appeal granted leave. The plaintiff is employed as deputy director in the office of the Compensation Commissioner. The respondent is an orthotist and prosthetist in private practice.

[2] On 26 January 2004 the respondent made certain remarks about appellant during a radio interview, which was broadcasted on the Monitor, a programme of the South African Broadcasting Corporation. The respondent relied, during the interview, on information he got from an unknown agent and stated:

"Toe se hy vir my 'Man, jy weet man, dis baie maklik, ons vat Mnr Fannie Kruger (dis nou die Kommissaris homself) jy weet, vir a naweek op 'n bosberaad en ons bespreek hierdie ding' "

[3] The appellant sued for defamation, asserting that the above statement made during the interview was devoid of any truth and placed him under suspicion. He was responsible for a budget of more than R1,2 million and his name and reputation was at stake. He was humiliated before his colleagues, friends and family. In paragraph 4 of the particulars of claim he alleged that the statement was defamatory of him for the following reasons:

"Voormelde woorde is deur Verweerder gebesig met die bedoeling om daardeur te kenne te gee, en het verweerder inderdaad daardeur te kenne gegee dat eiser:

- 4.1 Korrupt en/of oneerlik is deurdat hy omgekoop word om betalings aan sekere praktisyns te versnel;

- 4.2 Hom versoen met en/of deel is van 'n industrie wat van onkonvensionele en/of onreelmatige en/of onwettige metodes gebruik maak ten einde die betaling van vergoedingseise te versnel of af te handel;
- 4.3 Vergoedingseise op die wyse in paragraaf 4.2 hierbo bedoel afhandel ten koste van vergoedingseise wat reelmatig deur eiser afgehandel behoort te word; alternatiewelik dat eiser vergoedingseise slegs op die wyse in paragraaf 4.2 hierbo bedoel afhandel en weier en/of versuim om vergoedingseise op 'n reelmatige wyse af te handel;
- 4.4 Hom versoen met en/of deel in die bedrog wat gepleeg word deur personeel en/of voormalige personeel in diens van die Vergoedingskommissaris in die afhandeling van vergoedingseise;
- 4.5 Onbevoeg en/of onbekwaam is en nie sy pligte as werknemer in diens van die Vergoedingskommissaris behoorlik nakom nie."

[4] The respondent denied in his plea that the interview was defamatory of the appellant, and if so, he denied that he made the remarks with the necessary *animus iniuriandi*. The respondent pleaded that the allegations were the truth and were in public interest to make public the position in the office of the Compensation Commissioner.

[5] The trial court found that the words were not defamatory of the appellant and that no reasonable listener of ordinary intelligence would have attributed the words heard in the context of the interview as a whole any other meaning than that the respondent was the victim of ineptitude and inefficiency in a government office.

The background

[6] It is not in dispute that there existed serious problems in the office of the Commissioner regarding payments of overdue fees payable to doctors and other service providers who rendered services to injured workmen for which the Compensation Commissioner was liable. The respondent is one of the service providers who experienced problems with the payment of claims he submitted for payment by the Commissioner. He took the matter up with the Commissioner and eventually also instructed an attorney to assist him. In desperation, the respondent contacted the SABC and requested them to investigate the situation. He

agreed to give an interview when he was asked if he was prepared to have his complaint broadcast.

[7] In the interview, respondent spoke about, *inter alia*, the inefficiency in the Commissioners office where hand-delivered documents got lost or misfiled, measures that unpaid service providers have to resort to in order to recover their fees, like, the use of consultants who were previously in the employ of the Commissioner who interacted with their former colleagues who are responsible for payment of claims. The respondent explains the *modus operandi* of the consultants and the risk inherent in employing some of them. The only reference to the appellant is what the respondent was told that in order to expedite payment, consultants have to take appellant to a "bosberaad en bespreek hierdie ding"

[8] The issue in the case is whether these words in the context of the broadcast were defamatory of the appellant and, if so, the quantum of appellant's claim.

[9] It was submitted on behalf of the appellant that the ordinary listener's first impression would have been that the appellant fails or refuses to attend to the finalization of claims in the ordinary or normal course of events; he only performs certain of his official

duties if unconventional methods are employed; he does not perform his official functions unless or until he is treated to a "bosberaad" outside normal working hours, where he is entertained at the expense of shady characters.

[10] The test for determining whether words published are defamatory is to ask whether a reasonable person of ordinary intelligence might reasonably understand the words to convey a meaning defamatory of the appellant. The test is an objective one. In the absence of an innuendo, the reasonable person of ordinary intelligence is taken to understand the words alleged to be defamatory in their natural and ordinary meaning. See *Mthembu-Mahanyele v Mail and Guardian Ltd and Another* 2004 (6) SA 329 at 342 G. This hypothetical reader/ listener should be endowed with average intelligence and education (*Basner v Trigger* 1945 AD 22, at 35). It must also be accepted that an ordinary reader will not take account only of what the words expressly say but also what they imply.

[11] Applying this test, I am not persuaded that the meaning which respondent's counsel sought to place on the vital statement is the correct one. The trial court, correctly in my view, stated that the word "bosberaad" does not have any negative, improper, or reprehensible or dishonest connotations. The word implies a

meeting of "leaders" where important deliberations or consultations take place away from the work environment without disturbance or distractions.

[12] The evidence indicates that the reactions of the people who heard the broadcast and spoke to him was to enquire from him if he was in trouble or what was going on and one wanted to know where the "bosberaad" was held. It is clear that none of them understood the statements to convey the innuendo contended by the appellant. Most importantly, the appellant himself concedes that what was said by the respondent was not defamatory *per se*. It must also be borne in mind that according to the reporter who conducted the interview, the listeners of the programme are mostly older than 35 to 40 years and fall in the category of the more educated.

[13] In my view, therefore, the ordinary listener understood and would have understood the statement to mean that as a result of an unacceptable break-down and shambles in the functioning of the office of the Commissioner, a "bosberaad" with a senior official like a deputy director, could facilitate and expedite payment of long outstanding claims. The trial court, correctly in my view, held that there is nothing in the words complained about to suggest that appellant derived any benefit from the "bosberade" or that there was any impropriety on his part.

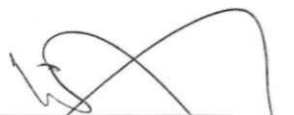
[14] Accordingly, the following order is made:

The appeal is dismissed with costs.



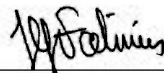
**MATOJANE**  
**JUDGE OF THE HIGH COURT**

I agree



**MSIMEKI**  
**JUDGE OF THE HIGH COURT**

I agree



**FABRICIUS**  
**JUDGE OF THE HIGH COURT**