

DELICTS IN NATIVE LAWDEFAMATION — DEFENCE OF "IN RIXA"

"The Native Commissioner has found as a fact that in the course of an altercation between Plaintiff and Defendant at a beer-drink, Plaintiff directed the words "tolo lenya" at the Defendant and that the latter in rixa and by way of retort replied with the words complained of — "illegitimate son of Klaye". It remains therefore only to ascertain whether in the circumstances the Defendant was liable in damages.

The words used by Defendant of Plaintiff are clearly defamatory per se and the law presumes the existence of animus injuriandi from the mere fact that the defamatory words were published and this presumption the Defendant can only rebut by proving that his case falls within certain definite and recognised categories of privilege, exemption or excuse. Neither privilege nor justification have been pleaded and the sole defence is that the words were uttered used in rixa and that the Defendant was thereby absolved.

Alia that the words were spoken in rixa, however, does not avail the Defendant unless the words spoken by way of retort were moderate and proportionate to the injury inflicted by the Plaintiff and were not subsequently persisted in. (McKenzi: "Law of Delict in S.A." p. 138; Kennick v City of Johannesburg 1907 T.S. 389 and Rebe v Bowie 1944 T.P.D. 997).

In the present case the words used by Plaintiff towards Defendant were mere meaningless abuse and to impute illegitimacy in reply can scarcely be called moderate & proportionate to the injury inflicted by the Plaintiff, more especially when the Defendant admits, as he does in his evidence, that there is no truth in his statement that Plaintiff was the illegitimate son of Klaye.

In the case of Lofer v Neria (1874 Buchman 5) it was held that if there had been a quarrel and the words had been used in rixa, the Defendant might have freed himself from damages if, before pleading, he had withdrawn what he had said (See also Scott v Kretzman 15 E.D.C. 48)

Sipongo Nabileyo v Mputso Coma, 1936 N.A.C. (C10) 149