

**IN THE HIGH COURT OF NEW ZEALAND  
WELLINGTON REGISTRY**

**I TE KŌTI MATUA O AOTEAROA  
TE WHANGANUI-A-TARA ROHE**

**CIV-2021-485-386  
[2022] NZHC 540**

UNDER the Defamation Act 1992  
IN THE MATTER of the Defendant's Social Media Posts  
BETWEEN TAFARA MUTINGWENDE  
Plaintiff  
AND JOSHUA COOPER-TAEP  
Defendant

Hearing: 22 February 2022

Appearances: J J Pietras for the Plaintiff

Judgment: 22 March 2022

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**JUDGMENT OF COOKE J  
(Formal proof)**

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[1] In these proceedings Mr Tafara Mutingwende sues Mr Joshua Cooper-Taepa in defamation. Both are young semi-professional musicians operating in the hip hop scene. Mr Mutingwende is 23 years of age and goes under the stage name "Theo Outlandish". He is also part of a group called Gallantino. Mr Cooper-Taepa is also a hip hop artist operating particularly in Kapiti. His stage names are "Euginthecut" and "KC4L".

[2] In late 2020 allegations were made that a group of young men were engaged in raping, date raping, or otherwise sexually abusing young girls. These defamation proceedings concern alleged statements made by Mr Cooper-Taepa about Mr Mutingwende in an Instagram post, and particular during an Instagram "livestream" where persons were able to join what was effectively a broadcast by

Mr Cooper-Taepa. During this livestream it is alleged that Mr Cooper-Taepa said that Mr Mutingwende engaged in this kind of activity with young girls.

[3] Mr Mutingwende seeks a declaration that Mr Cooper-Taepa is liable to him in defamation, an order for indemnity costs pursuant to s 24 of the Defamation Act 1992, and a permanent injunction restraining Mr Cooper-Taepa from making or distributing any further defamatory statements about him.

[4] Mr Cooper-Taepa has failed to take any steps in these proceedings. Affidavits of service have been provided. On 12 October 2021 the Associate Judge set the proceedings down for a formal proof hearing which is the hearing that has proceeded before me.

[5] There is a second proceeding against Ms Madeline Pearson-Hodge which I understand is to be defended. The hearing before me deals only with the claim against Mr Cooper-Taepa.

### **Formal proof in defamation**

[6] The approach the Court adopts to a defamation proceeding by way of formal proof is well established. In *Solomon v Prater* Clark J held:<sup>1</sup>

In a formal proof context such as this, the Court's role is to assess whether [the plaintiff] has established the elements of his claim and, if he has, to consider the issue of remedies. The standard to which the Judge is required to be satisfied in relation to the plaintiff's evidence "is much the same as it would be if the proceeding had gone to trial".<sup>2</sup> Specifically, in a formal proof setting, the Court is not required to consider hypothetical affirmative defences.<sup>3</sup> Accordingly, all issues for determination are to be determined against the standard of the balance of probabilities.

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[The plaintiff] must establish the essential ingredients of his claim, namely that—<sup>4</sup>

- (a) a statement has been made;
- (b) the statement was defamatory of [the plaintiff]; and

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<sup>1</sup> *Solomon v Prater* [2020] NZHC 481 at [11]–[12].

<sup>2</sup> *Ferreira v Stockinger* [2015] NZHC 2916 at [35].

<sup>3</sup> *Booth v Poplar Road Farms Ltd* [2019] NZHC 807.

<sup>4</sup> *Kim v Cho* [2016] NZAR 1771 (HC) at [15]–[16].

(c) the defamatory statement was published by the defendant.

[7] Courtney J summarised the approach to identifying whether a statement is defamatory in *Kim v Cho*.<sup>5</sup> As the Court of Appeal explained in *Craig v Slater*, for a meaning to be defamatory it must tend to affect the plaintiff's reputation adversely in more than a minor way.<sup>6</sup>

[8] As is required by r 15.9 of the High Court Rules 2016, when a matter proceeds by way of formal proof, affidavit evidence is filed by the plaintiff to establish the necessary elements of the claim. Such an affidavit has been filed by Mr Mutingwende here.

### **Application in the present case**

[9] In his affidavit dated 26 January 2022 Mr Mutingwende sets out the factual basis for his claims. He explains the events that gave rise to the allegations made about him by Mr Cooper-Taepa. He says that on 18 October 2020 Mr Cooper-Taepa posted a message on his Instagram account stating:

7PM WE GO LIVE TO EXPOSE: Tafariaka Theo Outlandish ...

WE DO NOT CONDONE RAPE IN ANY WAY SHAPE OR FORM IN THESE COMMUNITIES.

[10] By itself this appears to be defamatory of Mr Mutingwende. Recordings of the livestream have then been provided to me. Mr Pietras contends in his submissions that the livestream broadcast involved Mr Cooper-Taepa alleging:

- (a) that Mr Mutingwende was responsible for the rape of over 40 young females;
- (b) that he had threatened to gang rape Mr Cooper-Taepa's girlfriend;
- (c) that he had "roofied" or drug-raped young females; and
- (d) that he was a paedophile.

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<sup>5</sup> *Kim v Cho*, above n 4, at [16]–[17].

<sup>6</sup> *Craig v Slater* [2020] NZCA 305 at [44]–[45].

[11] I have watched the recordings of the livestream. In the recordings Mr Cooper-Taepa explains that the purpose of the livestream was to allow the truth about Mr Mutingwende and his associates to be revealed, and discussed by the members of their community. He explains how he came to know Mr Mutingwende because Mr Mutingwende had attempted to begin a relationship with his own girlfriend. During that description he explains that Mr Mutingwende had said that he and his friends wanted to “run the train” with his girlfriend, suggesting that each of them would have sex with her in turn. This is the basis for the allegation in (b) above. I do not accept that this particular allegation is made out, however. That is because I do not understand that the suggested activity was necessarily non-consensual.

[12] But I accept that the balance of the livestream broadcast makes out the other allegations. Mr Cooper-Taepa goes on to say that he had been contacted by approximately 40 girls who had said that Mr Mutingwende and his associates had sexually abused them in some way, sometimes physically. This included having “roofied” them, meaning that the girls had been drugged and then engaged in sex with those who had drugged them without real consent. Mr Cooper-Taepa then says that Mr Mutingwende and his associates should be in jail, that he had called him a rapist, and that he had not defended himself. He says that many of those who had shared their stories had shared personal details which he was not going to divulge for reason of their privacy, and he invited them to share what Mr Mutingwende and his associates have done during the livestream.

[13] Two females then join the livestream and make further significant allegations. The first alleges that there were up to 100 girls involved in what Mr Mutingwende and his associates had done, ranging from rape including infliction of physical injuries, drugging girls to and then having sex with them, and sex with underage girls. There is also an allegation made that a girl had been abducted. Following this presentation Mr Cooper-Taepa makes comments on the livestream effectively endorsing what she has said. He again encourages people to join the livestream indicating there are people that may not have the courage to speak out.

[14] A second female then joined the livestream, again making allegations that girls have been drugged for sex without their consent. This includes an allegation that she

saw Mr Mutingwende give a pill to a 15-year old friend, with a clear implication that this is a drug for the purposes of drug rape. Again Mr Cooper-Taepa speaks after her statements during the livestream in a way that suggests he endorses the allegation.

[15] I have given consideration as to whether the allegations can really be taken seriously given that they could be thought of as social media “hot air”. But this is not their character. Mr Cooper-Taepa makes it clear that he is seeking to raise an issue which he says is an important one for the purposes of their community, saying a number of times that the wider Wellington community needs to stick together, that behaviour of the kind being described should not be allowed to happen and that the community needed to rally around and respond to it. For that community the allegations were clearly allegations that Mr Mutingwende and his associates had engaged in sexual offending with girls, including rape, drug rape and underage sex.

[16] Mr Cooper-Taepa has not defended the claim, and there is no basis for saying that the allegations are true. They are plainly defamatory of Mr Mutingwende. Indeed it is difficult to imagine such statements would not lower Mr Mutingwende in the estimation of right-thinking members of society generally.

[17] I accept that the livestream was watched by over 220 Instagram users. That is apparent from watching the livestream itself and from Mr Cooper-Taepa’s comments during the livestream.

[18] Mr Mutingwende says that he received over 100 messages on his Instagram account by the following morning of an abusive nature. Mr Mutingwende explains that he has never been charged with any offences, that he has no criminal convictions and that he has never been in trouble before. He says that in April 2021 he was asked to attend a voluntary interview with the police as it would appear that the police investigated allegations of sexual offending. The interview lasted for 30 minutes or so, and later that day police advised his lawyer that they would not be taking the matter any further.

[19] Mr Pietras has explained that in December 2020 an associate of Mr Mutingwende was charged with various sexual offences, but that Mr Mutingwende has never been charged with any offence associated with the police investigation or

otherwise. The fact that charges have been brought against an associate of Mr Mutingwende does not mean that the allegations against him are true. As indicated Mr Cooper-Taepa has not defended these proceedings, and the defence of truth is not in issue.

[20] Mr Mutingwende explains the impacts of the allegations on him, including the negative effect on his wellbeing, and the damage that is done to his reputation in the music and fashion industry. I accept that the allegations have adversely impacted upon him in a more than minor way.<sup>7</sup>

### **Appropriate remedies**

[21] I accordingly accept that the elements to establish defamation are made out. As indicated from the authorities above the next step is to consider the appropriate remedies.

[22] Mr Mutingwende simply seeks a declaration that he has been defamed. Given my findings that declaration is duly made.

[23] He also seeks an order for indemnity costs in accordance with s 24 of the Defamation Act. I agree that an award of indemnity costs is appropriate in the present case. I understand Mr Mutingwende is legally aided which will mean that the award will be relatively modest.

[24] Finally Mr Mutingwende sought a permanent injunction against Mr Cooper-Taepa. As I discussed at the hearing I do not think such an injunction is necessary, and accordingly that it is appropriate. I have no evidence to suggest that Mr Cooper-Taepa will continue to make these allegations. If he did, of course, there may be further repercussions for him. At this stage I do not think this order is necessary.

**Cooke J**

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<sup>7</sup> *Craig v Slater*, above n 6.