

# The fallout from false accusations in communal living

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8 Apr 2024

The case of *Body Corporate of Sunnyside Gardens v Perreira* involves a dispute between a sectional title owner and the body corporate of the Sunnyside Gardens. Eduardo Perreira, a 67-year-old retiree, owner and resident in the block for 15 years, issued a summons in which he alleged defamation against the body corporate.



Image source: Kelly from [Pexels](#)

Perreira claimed that the statement in the letter he received from the body corporate was defamatory and caused harm to his reputation. The magistrate hearing the matter, found in favour of Perreira and awarded him R50,000 in damages. The body corporate appealed the decision, arguing that the letter was not defamatory to Perreira and that there had been no publication to third parties. The matter went on appeal to determine whether the lower court's decision was correct.

## What is defamation?

Defamation is the unlawful and intentional publication of a false statement about someone that harms their reputation. This means the statement must be communicated to a third party, where such statement is untrue and causes damage to the person's reputation in the eyes of others. The harm can be to their personal character, professional standing, or relationships, which can cause financial loss or emotional distress.

## The statement in dispute

The statement complained of was that Perreira was using the garage for an impermissible carpentry business and further using the common property electricity in order to run his business. The statement further alleged that Perreira was causing a nuisance to the neighbours/ owners in the apartment block.

## Proof of publication

Perreira had to prove that the defamatory statement had been communicated to someone other than himself. This can be done via email, public boards and even words spoken to a third party.

The letter containing the statement was first sent to Perreira via email and he was later made aware by a fellow neighbour that the same letter had been posted in the foyer for all the residents in the apartment block to see. It was further sent to the managing agent and distributed to all the trustees of the body corporate.



## Defamation suit a warning to all influencers about appropriate conduct

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The body corporate's reliance and defence of non-publication was based on the contention that the recipients of the letter were part of the body corporate itself. The court concluded that the circulation of the letter to all owners, the managing agent and to all the trustees constituted publication of the statement.

## Defamation claim

Perreira had to prove to the court that the meaning of the statement that was addressed to him could be objectively understood as defamatory in the eyes of others. It was perceived to all that Perreira committed a wrongful action. The letter was drafted in a manner that accused and found Perreira guilty of the wrongful action without affording any opportunity to address and respond to the accusation.

Perreira was instructed in terms of the letter to stop being a nuisance to owners, cease with running his business from his garage and cease with using the electricity of the common property to sustain such business.

The body corporate did not conduct any investigation or give Perreira the opportunity to respond to the accusations prior to sending the letter. The body corporate failed to provide any evidence, or even the complaints received to justify the demand letter sent to Perreira.

The court found that there was no proper inspection conducted by the body corporate and no evidence of any woodworking equipment and no plug point in the communal area or any proof that Perreira had violated any rules or misused the common property electricity.

The appeal court upheld the magistrate's findings that the letter was defamatory and published to third parties.



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## Analysis behind the findings

The entire process, from receiving the complaints to sending the defamatory letter, lacked substantive and procedural fairness. Perreira, as a trustee, was not consulted or informed prior to receiving the letter.

It was evident by the evidence led by the two witnesses at the trial that there was no evidence of complaints against Perreira, no investigation to determine if these alleged complaints were true, and there appeared to be history of conflict and confrontation between the two witnesses who were also trustees and Perreira. Therefore, the court found in favour of Perreira and ordered the body corporate to pay damages of R50,000.

In a sectional title scheme, the body corporate is made up of trustees, elected by the owners, responsible for managing the common property and upholding the scheme's rules. It is important for all to be aware of the scheme's rules and procedures in order to have a guideline referring to various grievances and how things should be conducted with the aim to resolve the matter.

An investigation of the complaint should have been done and the other party should be granted the opportunity to address the complaint in order to resolve the matter. Pereira obtained legal representation and tried to engage with the body corporate to investigate the alleged complaints and to give him an opportunity to answer. The letters were ignored by the body corporate.

## **Conclusion**

Living in a communal setting where there is a sense of open communications has benefits in terms of a culture of active listening and communication. Good communication in terms of title scheme's rules ensures that all members are aware of their rights and responsibilities.

By having such a setting could allow the owners of the title schemes and body corporate to address their issues with one another and resolve it in an amicable manner, including mediation, instead of allowing one's judgment to be clouded by a personal vendetta.

## **ABOUT THE AUTHOR**

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