

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG LOCAL DIVISION, JOHANNESBURG

CASE NO: 077356/2023

DATE: 15-08-2023

NOT REPORTABLE

NOT OF INTEREST TO OTHER JUDGES

REVISED

19.09.23

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In the matter between

LERATO KGAMANYANE

Plaintiff

and

LORATO MOLEMA

Defendant

J U D G M E N T

20 **YACOOB, J:** The applicant approaches this Court on an urgent basis to obtain interdictory relief against the respondents restraining them from publishing defamatory allegations on social media and ordering them to remove existing defamatory material and publish a retraction.

The publications complained of are posts and videos

posted to the social media platforms, TikTok and Instagram. The publications took place between 4 July and 25 July 2023. The applicants consulted their attorneys on the 28 July and caused a letter to be send to the respondents that evening. The first respondent responded the following day declining to comply with the applicant's request and instead herself requesting an apology from the respondents.

The applicants then issued papers on 3 August serving them at 18:18. The respondents filed their answering
10 affidavit on 11 August after having been asked to do so by 8 August and the applicant's filed a replying affidavit on 13 August.

According to the applicants the matter is inherently urgently because the respondent has posted comments, screenshots and videos which call them scammers, accusing them of having scammed the first respondent for money.

The dispute between them stems from a purchase the first respondent made through the second applicant's Instagram account of two dresses. One of the dresses was the
20 wrong size and they followed a back and forth about whether an exchange was possible, or a refund was necessary.

On 4 July, after it was clear that there was no exchange and the first respondent had not yet received her refund, the first respondent posted comments on the Instagram page of the second applicant calling the applicants scammers. The first

applicant deleted these posts. The first applicant also apparently blocked the first respondent from that page.

There was some further back and forth and the second respondent apparently posted derogatory remarks on 11 July. However, the applicant was unaware of the relationship between the first and second respondents at that point.

The applicants informed the first respondent on the 13 July that they needed bank details for the refund. Apparently, this was because there was a problem with the payment platform
10 Paygate. It is unclear whether the respondents were informed of that problem.

On 14 July, after the bank details had been requested and provided a video was posted which again called the applicants scammers. The applicants appear to have done nothing about this video. They do not appear to have asked the respondents to take it down or to have followed any other avenues.

The refund then only went through on 19 July and another post appeared on 25 July in which the second respondent
20 claimed to be providing an update to the effect that the money had been refunded. However, this post also referred to the applicants as scammers and stated that the first respondent had been scammed.

Thereafter on 28 July the applicants approached their lawyers as set out above and issued the application on 3 August.

In the affidavit the applicant set out the number of views of the videos as at 3 August.

It is submitted for the applicant that the matter is inherently urgently and that the correct balance has been struck between acting with due promptitude and with imposing a reasonable degree of urgency.

The respondent submits that that there is no urgency and that the applicant has not acted in a manner which shows urgency. I agree. In the world of social media a day is a very long
10 time. The applicant ignored or failed to take steps about allegations for what amounts to almost a month. It appears that the reason for this was that, although the applicants do not consider themselves to be scammers, they knew that they had to pay the refund and were therefore in the wrong.

They expected the allegations to stop after the refund was made. However, this gives the lie to the applicants' own contentions that the harm is ongoing for as long as the posts remain and that the urgency is in the very fact that they are being called names which have criminal connotations. If that was in fact
20 the case the applicants ought to have requested the respondents to remove the post already on the 14 July. They did not do that.

In addition, even though the respondents responded to the letter sent late on a Friday night by the following afternoon, the applicants still waited until the following Thursday evening to serve their papers. There does not appear to have been any

sense of urgency by the applicants, or, if there was, it has not manifested itself in the way that the applicants dealt with the matter.

Finally, although the applicant shows that there were a certain number of views on the posts by 3 August there is no indication of whether those views took place mostly at the time they were posted or after. Nor is there any attempt to ask the Court for condonation to place before it an update of how many more views there have been in the intervening period, or whether
10 there were any other posts.

I cannot assume that the posts still have currency or that the respondents intend to continue to make allegations. These factors are in my view entirely relevant to the question of urgency. For these reasons I find that the matter is not urgent, and the matter is struck for want of urgency with costs.

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20 **YACOOB, J**
JUDGE OF THE HIGH COURT
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