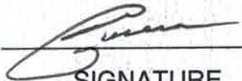


REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG

CASE NO. 21/32566

(1)	REPORTABLE: YES / NO	☒
(2)	OF INTEREST TO OTHER JUDGES: YES / NO	☒
<u>3 8 2022</u>		<u></u>
DATE		SIGNATURE

In the matter between:

THE UNIVERSAL CHURCH OF THE KINGDOM OF GOD

Applicant

and

MANYISA, BONGANI

Respondent

JUDGMENT

NOCHUMSOHN AJ

1. This is an application in which an order is sought directing the Respondent to remove certain defamatory material published in relation to the Applicant, upon Facebook, and restraining Respondent from publishing further defamatory statements.
2. In the Founding Affidavit deposed to on behalf of the Applicant, a church involved in national outreach projects, the deponent alleges that the defamatory statements made by the Respondent, a former pastor of the Applicant is based upon such material being defamatory, thereby infringing upon the Applicant's dignity and reputation. The deponent avers further that the Applicant has suffered ongoing harm arising out of the defamatory statements and that such publication will only cease once the Respondent has been interdicted.
3. From an examination of the material published, it is clear that same is defamatory of the Applicant.
4. On 21 May 2021 at 08h55 the Respondent published a statement on Facebook, the core message being "*How to steal money using the bible*". The statement was accompanied by a photograph of Bishop Marcelo Pires, a bishop of the Applicant. I agree with the Applicant that such statement is directed at it, as Bishop Pires is one of its leaders and is the public face of the Applicant. The statement certainly is defamatory and injurious to the Applicant's reputation, and insinuates that the Applicant steals money.

5. Further defamatory material was published by the Respondent on 27 May 2021 at 15h21 upon Facebook stating "We are soon going to reveal the video where Bishops are seen dancing, celebrating the money received during campaign. The video will surely *shock you on how bad is the love of money in the church... The church is led by wolves who are after money.*" Such reference to the church was a reference to the Applicant, the same likewise being defamatory and injurious to the Applicant.
6. On 27 May 2021 at 17h53, the Respondent published further defamatory material on Facebook stating "Special. The reasons pastors and wives in UCKG *were illegally searched in the meeting.*" Such statement insinuates that the Applicant conducts illegal searches upon its members, which is once again defamatory and injurious to the Applicant's reputation. Further defamatory material of a similar nature was published by the Respondent on Facebook on 21 June 2021 and 24 June 2021.
7. The Applicant submitted that:
 - 7.1. it has suffered reputational harm arising out of such statements and will continue to suffer such reputational harm for as long as such material remains in publication, and for so long as the Respondent continues to make defamatory statements about the Applicant;
 - 7.2. All of such statements were made by the Respondent, wrongfully and intentionally with a view to bringing reputational harm to the Applicant.

7.3. such statements are all untrue and are not in the public interest.

8. In the Respondent's Answering Affidavit, he avers that his only work was that of a pastor in the Applicant church. He alleges that pastors are sworn to secrecy and are "*promised*" harsh punishment and suffering for disobedience to the Applicant. He found himself drawn into this "systemic web of control and *manipulation*" and became totally dependent upon the Applicant for his livelihood. The Respondent alleges further to have been "trained and mandated to make money for the Applicant and was directed to run multiple services a day *in which members are constantly coerced to make donations.*" He alleges "to have been financially exploited by the Applicant who only gave him money for meals with a room in the church premises to sleep in."
9. The Respondent alleges further that the Applicant "is nothing more than a money-making *scam.*"
10. The Respondent alleges further that a wife was chosen for him by the Applicant, from the ranks of the female ushers. He avers that he did not have a choice in selecting his wife. His duty as a pastor was to generate money for the church by coercing church members with bible passages, twice a year to sacrifice to the Applicant a full month's salary, a car, with the promise of blessings from heaven. He alleges further to have been ordered to undergo a vasectomy as a sign of his loyalty and true commitment to the Applicant.

11. The Respondent avers that he was not allowed to have children and disobedience to this ultimate requirement "meant a life of hardship and misery" and he was reminded not to question God's authority over his life through the Applicant.
12. The Respondent avers further that after undergoing the vasectomy, he was promoted to a larger church, overseeing branches in Soweto, Diepsloot, Vereeniging and the Johannesburg Central Business District as reward for having remained loyal to the Applicant. The Respondent alleges that he thereafter became "depressed and demoralised, as the reality of what I had done weighed down on me, a weight which got heavier *with time*."
13. The Respondent ultimately elected to resign as the Applicant's pastor and start his own church.
14. The Respondent avers that since the opening of his church, the Applicant has attempted to ridicule, defame and humiliate him. On 6 November 2017, the Respondent launched a defamation claim against the Applicant and seven others, which action is still pending. The Respondent avers that the current application is "nothing but a knee-jerk reaction to the pending defamation application against the *applicant and seven others*."
15. In his defence to the application, the Respondent says that the publications on his Facebook wall are true and he presented same in an open inquiry which was recorded, published on the Internet and broadcast on television and radio.

16. In paragraph 7 of his Answering Affidavit, the Respondent avers that his statements are true and that he can prove it. Yet, the Respondent falls far short of discharging the necessary evidential burden in so proving this defence. He says that video recordings could be availed at the hearing of this application. Curiously, he does not describe in his affidavit, what such recordings purport to demonstrate. The Respondent does not take the court into his confidence by advising when the video recordings were filmed, or where they were filmed. He does not aver who was filmed, what the people filmed were saying or what they were doing. The Respondent failed to allege what the video intended to capture or portray. One would have expected all of such detail to be fully articulated in the answering affidavit. Without such particularity, a viewing of the video would be meaningless.
17. The Respondent submits at paragraph 8, that his statements are based on facts and in the interests of the public. He submits that his statements amount to fair comment and are within his freedom of expression.
18. I have considered the confirmatory affidavits annexed to the answering affidavit. First, there is nothing in the confirmatory affidavits which indicates wrongful conduct on the part of the Applicant. Such affidavits do not support the bland allegations made by the Respondent. Secondly, the confirmatory affidavits do not corroborate any specific incident deposed to by the Respondent. On the contrary, such confirmatory affidavits are vague, wide and portray the Applicant in highly defamatory terms, without specific reference to specific incidents raised by the Respondent. In this sense, the confirmatory affidavits are unhelpful and do not advance the defences raised.

19. Once a plaintiff establishes that a defendant has published a defamatory statement concerning the plaintiff, it is presumed that the publication was both unlawful and intentional. A defendant wishing to avoid liability for defamation must then raise a defence which rebuts unlawfulness or intention.

20. I agree with the Applicant's submission that the statements paint the Applicant as:

20.1. A criminal organisation, aimed at stealing or defrauding its members of their money;

20.2. An oppressive organisation;

20.3. An evil organisation in the service of the devil.

21. It is common cause that:

21.1. the Respondent published the statements in issue;

21.2. the statements are directed at the Applicant; and

21.3. the statements are harmful and injurious to the reputation of the Applicant.

22. The impugned statements are thus prima facie defamatory. However, the Respondent submits that such statements are true and in the public interest and amount to fair comment.

23. In order to invoke a defence of truth and public interest, the Respondent must prove, on a balance of probabilities that:

23.1. the statements are true; and

23.2. its publication was to the benefit of the public (*Neethling v du Preez & Others*; *Neethling v The Weekly Mail & Others* 1994 (1) SA 708 (A) at 770/771.

24. The question of whether or not a statement is for the public benefit must be assessed on the merits, and the time, manner and occasion of the publication must be carefully investigated (*Allie v Foodworld Stores Distribution Centre (Pty) Ltd and Others* 2004 (2) SA 433 (SCA) at paragraph [55 to 56].

25. The Respondent cannot invoke a defence of truth and public interest, inasmuch as he has failed to set out any facts from which it can be concluded that the statements are true. Instead, the Respondent merely relies on vague, broad-brush allegations and conclusions.

26. In particular, the Respondent fails to identify who allegedly instructed him or trained him to "run multiple services a day in which members were constantly *coerced to make donations*".

27. This vague theme permeates throughout the Answering Affidavit, without the requisite finite detail from the Respondent. By way of a further example, the Respondent does not allege who instructed him to undergo a vasectomy, or how a medical procedure was forced upon him.
28. The high watermark of the Respondent's case is his submission, inter alia, that the Applicant is an entity that exploits the masses. However, he fails to set out any facts pertaining to any particular events, to support a conclusion that the Applicant is engaged in something untoward, is oppressing members, or is evil.
29. The Respondent has thus failed to discharge his onus and the defence of truth and public interest cannot be sustained.
30. In order to invoke a defence of fair comment, the Respondent must prove that:
 - 30.1. the statement complained of was fair comment and not a statement of fact;
 - 30.2. The comment was fair;
 - 30.3. the facts commented on were truly stated, and
 - 30.4. the matter was of public interest.

31. The use of the word "*fair*" does not imply that the criticism for which the protection is sought must commend itself to the judgment of the court, nor that it must be impartial or well balanced. It merely means that such criticism must confine itself within certain prescribed limits. Those limits are that the comment must be a genuine expression of opinion, it must be relevant and it may not be expressed maliciously. In casu, a defence of fair comment cannot be sustained, as the statements do not amount to nor are they alleged to be comment or opinion. Such statements are presented as facts, which have not been proved to be true.
32. In the result, the Applicant satisfies the requirements for a final interdict inasmuch as:
- 32.1. it is vested with a clear right;
- 32.2. it has suffered an injury actually committed and reasonably apprehended;
and
- 32.3. there is no other protection available.

In this sense the requirements of *Setlogelo v Setlogelo* 1914 AD 221 at 227 have been fulfilled.

33. The Applicant has a clear right not to be defamed, has suffered injury and will continue to suffer injury should the respondent be permitted to continue to publish defamatory statements. An action for damages cannot afford similar protection

due to the continuous nature of the publications and the fact that the damages may well be unquantifiable.

34. The Answering Affidavit is more damaging for the Respondent's case than protective of him. This is so, as the tenor of such Affidavit indicates that the publication will not stop until there has been an order to that effect, in an environment where it is apparent from the papers that the statements have not been proved to be true, in the public interest or amount to fair comment.

35. In the circumstances, I make the following Order:

35.1. That the Respondent be ordered and directed to remove the video, published on 27 May 2021 at 20h53 from the Facebook platform, at URL: <https://www.facebook.com/jmanyisab>;

35.2. That the Respondent be ordered and directed to remove from the Facebook platform at the URL: <https://www.facebook.com/jmanyisab>, the posts published at the following times:

35.2.1. 21 May 2021 at 08h55;

35.2.2. 27 May 2021 at 15h21;

35.2.3. 27 May 2021 at 17h53;

35.2.4. 11 June 2021 at 20h29;

35.2.5. 21 June 2021 at 15h20;

35.2.6. 21 June 2021 at 18h31;

35.2.7. 21 June 2021 at 18h50; and

35.2.8. 21 June 2021 at 08h36.

35.3. That the Respondent be interdicted and restrained from publishing any further defamatory statements (including but not limited to photographs and videos) against the Applicant on any platform.

35.4. That the Respondent bear the costs of this application on the scale as between party and party.



NOCHUMSOHN, G

ACTING JUDGE OF THE HIGH COURT

On behalf of Applicant: Advocate R Bhima (Rushilbhima@law.co.za)

Instructed by: Martins Weir-Smith Inc(alex@mwlaw.co.za)

On behalf of the Respondent: Personally (jbmanyisa@gmail.com)

Date of Hearing: 3 August 2022

Date of Judgment: 3 August 2022

This judgment was Authored by Nochumsohn AJ and is handed down electronically by circulation to the parties/their Legal representatives by email and uploading to the electronic file of this matter on caselines. The date of this Judgment is deemed to be 3 August 2022.