



IN THE HIGH COURT OF SOUTH AFRICA
FREE STATE DIVISION, BLOEMFONTEIN

Reportable:	YES/NO
Of Interest to other Judges:	YES/NO
Circulate to Magistrates:	YES/NO

Case No.: 797/2018

In the matter between:

NEIL FICHARDT

Applicant

and

PHILLIP POTGIETER
RENIER FOURIE
WALTER GILFILLAN
ANN STRYDOM

1st Respondent
2nd Respondent
3rd Respondent
4th Respondent

HEARD ON: 10 MAY 2018

JUDGMENT BY: LOUBSER, J

DELIVERED ON: 7 JUNE 2018

[1] INTRODUCTION

[1] On 16th February 2018 Reinders, J issued an interim order on an urgent and *ex parte* basis, calling on the respondents to show

cause on a certain date why the following relief, *inter alia* should not be made a final order of court:

3.1 That the respondents are interdicted and restrained from posting any information pertaining to the applicant and/or the applicant's immediate family on Facebook, or any other social media or any other website.

3.2 That the respondents are ordered to remove any postings and or comments on such postings pertaining to the applicant and/or the applicant's immediate family on Facebook or any other social media or website it might have been so posted.

[2] The interim relief was ordered to operate as an interim interdict with immediate effect. On the return date of the *rule nisi*, the matter came before me. Mr. Ploos van Amstel, appearing for the applicant, informed the court that the whereabouts of the 4th respondent are unknown and that the applicant is no longer interested in a confirmation of the order against her.

[II] **THE FACTS**

[3] The applicant is a businessman from Reitz in the Free State Province. The 1st, 2nd and 3rd respondents are all residing in Louis Trichardt, Limpopo Province. The applicant is the sole member of a close corporation which specialises in the

manufacturing and production of bio-diesel and bio-fuel as a re-useable energy and as a viable alternative to fossil fuels.

- [4] Many years ago, during the course of 2004, the 1st respondent and his father bought the first oil press from the applicant's CC on behalf of their company, Potgieter Boerdery. The CC concluded a similar transaction with the company "Green Farms" in the Louis Trichardt district. Due to financial constraints, the CC was unable to import the oil press machine earmarked for Green Farms, and they made a loan of some R300 000-00 from Potgieter Boerdery to fulfil its obligations towards Green Farms. Eventually, the CC was able to pay back only R37 000-00 of this loan, but the applicant also entered into a settlement agreement with the 1st respondent to pay back the balance of the loan.
- [5] Thereafter the CC again defaulted in repaying the balance of the loan, and in September 2017 the 1st respondent issued summons against the applicant. The action was not defended and the 1st respondent apparently obtained default judgment against the applicant subsequently.
- [6] Against this background, the applicant avers that he was shocked to discover defamatory comments made by the 1st respondent on Facebook, a social network site, about him on 10 February 2018 at Reitz. According to the applicant, the posting was made by the 1st, the 2nd and the 3rd respondents. It reads as follows:

"Graag waarsku ek almal teen die man op die foto, Mnr. Neil Fichardt van Reitz. Hy skuld my al vir meer as 'n jaar R368 000-00, asook ander boere in

Limpopo. Tans ignoreer hy my oproepe en het my op alle vlakke geblok. Hy gaan aan met sy lewe en hou vakansies en doen besigheid. Wees versigtig, Hy is seepglad. Indien iemand weet waar hy hom bevind, sal ek dit opreg waardeer as u my in kennis kan stel. Dankie Phillip Potgieter."

- [7] This posting was followed by a comment by the 2nd respondent, also on Facebook, stating that the applicant is being investigated by the Hawks and that he is a habitual offender. In a further comment posted by the 3rd respondent, the applicant is referred to as "gemors" (trash).

- [8] These comments by the respondents concerned were tagged or shared to various other Facebook pages, including Noordoos Vrystaat Advertisings, Bethlehem Advertisings and Bethlehem Volkswagen. They were soon followed by two voice notes coming from the 1st respondent wherein it is stated that the 1st respondent wants his money.

"As hy my betaal maak ek sy naam skoon. Ek sê vir hom op sosiale media: Neil, baie dankie, jy is 'n eerbare mens, gaan aan met jou besigheid, ek waardeer, jy het my terug betaal, maar as hy my nie betaal nie, gaan ek hom nie uitlos nie. Ek is besig met fase 2. Hy moet dit mooi verstaan. Kry die geld by jou ma, jou pa, jou broers, leen 'n bietjie by almal! Skuld hulle eerder, maar betaal my, my geld! Ek soek my geld! Ek soek dit!"

- [9] The second voice note came from the 2nd respondent.

"Jy's skelm. Green Farm het 'n saak oopgemaak teen jou en jy's 'n skelm. Jy is 'n oneerlike skelm met jou sob stories wat jy vertel."

- [10] The contents of the Facebook messages are not disputed by the respondents, but they contend that this court has no jurisdiction to hear the matter and that the posting were in any event the truth and in the public interest. The applicant alleges that, at the time the postings were made, it were shared 1315 times by Facebook members and that 88 people have made comments thereon.

[III] **JURISDICTION**

- [11] In defamation cases a court has jurisdiction if the words complained of were published within the court's area of jurisdiction.

See for instance: ***Simmonds v White 1980(1) SA 755 (C) and Tsichlas and Another v Touchline Media 2004 (2) SA 112 (W).***

Mr. Jooste, appearing for the respondents, submitted that publication of defamatory material must be made to third parties regarding the status of the plaintiff or the applicant, and not to the plaintiff or applicant himself in order to establish liability for the publisher. In this case, he submitted, the applicant himself accessed the postings in Reitz, and since the publication was not made to third parties regarding the applicant, in the Free State Province, the delict of defamation was not shown to have been committed in the area of jurisdiction of this court.

[12] I do not agree with this submission. Having regard to the names of the Facebook pages where the words have been posted, as mentioned earlier, it is obvious on a balance of probabilities that the postings have been published in the Free State amongst others. And on top of it all, the applicant was able to access the postings at Reitz in the Free State, which means that the publication indeed took place in the Free State for anyone to read. In this respect the present facts are on all fours with the findings of Kuny, AJ in the Tsichlas – case, *supra*, referred to earlier. I therefore find that this court has the necessary jurisdiction to adjudicate the present application.

[IV] **DEFAMATION**

[13] The words published by the 1st, 2nd and 3rd respondents concerning the applicant and in particular the words “seepglad”, habitual offender, “gemors” and “skelm” need little further explanation. The word “seepglad” certainly indicates dishonesty and deceitfulness on the part of the applicant. In my view, there can be no doubt that these words are reasonably capable of conveying to the reasonable reader a meaning which defames the applicant.

[14] The only remaining question is then whether the respondents have succeeded in dispelling the wrongfulness of their defamatory statements. The respondents bear a full onus in this regard, and are required to prove, for instance, the truth of their statements or the public interest pertaining thereto.

See: ***National Media Ltd vs Bogoshi 1998 (4) SA 1196 (SCA)***
and Neethling v Du Preez; Neethling v The Weekly Mail
1994 (1) SA 708 (A).

[15] As far as the truth of the statements are concerned, it is common cause that the applicant owes the 1st respondent a substantial amount of money. Having regard to the application papers as a whole, the applicant apparently owes a number of other people some money as well. But as far as the 1st, 2nd and 3rd respondents are concerned, that is where the full truth ends. The full truth is that the 1st respondent has instituted action against the applicant already, which action the applicant did not defend. Therefore it can be assumed that default judgment was granted against the applicant. These facts are not mentioned in the postings published by the respondents, and they make it look as if the whereabouts of the applicant are unknown, as if he is eluding them, and if he is only a scoundrel who defrauds people with the intention of stealing their money. Had the respondents bothered to mention the court case against the applicant and what followed in the wake thereof, it could have given a different context to their postings.

[16] It is also doubtful whether the postings were made in the public interest. It is apparent that the 1st respondent made his comments, and caused the 2nd and 3rd respondents to make their further comments, with the sole intention of forcing the applicant

to pay. If this was not so, he would not have said that he would clear the applicant's name on the social media as soon as he pays.

[17] In the premises, I am of the view that the applicant is entitled to a confirmation of paragraph 3.2 of the interim Court Order dated 16 February 2018. Mr. Ploos van Amstel, for the applicant, did not insist that paragraph 3.1 of the interim order also be confirmed. Because the applicant is for all practical purposes successful with his application, I can think of no reason to deviate from the general rule that costs are awarded to the successful party.

[18] The following order is made:

18.1 Paragraph 3.2 of the interim order dated 16 February 2018 is made a final order of court as concerns the 1st, 2nd and 3rd respondents.

18.2 The 1st, 2nd and 3rd respondents are ordered to pay the costs of the application jointly and severally, the one paying the other to be absolved.

P. J. LOUBSER, J

On behalf of the applicant:
Instructed by:

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Christo Dippenaar Attorneys
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On behalf of the respondents:
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