



**IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, JOHANNESBURG)**

- (1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED.

SIGNATURE

DATE: 22 April 2025

Case No. 40978/19

In the matter between:

MAMODUPI MOHLALA MULAUDZI

Plaintiff

and

TUMISHO MOTSEPE

Defendant

JUDGMENT

WILSON J:

- 1 The plaintiff, Ms. Mulaudzi, is the former chief executive of the Estate Agency Affairs Board. The defendant, Mr. Motsepe, is an IT specialist who worked at the Board when Ms. Mulaudzi was in charge. Ms. Mulaudzi sues Mr. Motsepe for defamation that she says was committed during a meeting in her office on 15 November 2019. It is not necessary to set out the defamatory matter in any detail. It is enough to say that Mr. Motsepe accused Ms. Mulaudzi of being an

“autocrat” and a “bully” in her conduct of the Board’s affairs, and in her dealings with the Board’s staff.

- 2 Mr. Motsepe admits he made those remarks, but he is defending the claim, and now seeks discovery of a number of documents he says are relevant to the issues defined in the pleadings. There are 23 items listed in Mr. Motsepe’s discovery schedule. However, at the hearing of this matter, Mr. Sikhakhane, who appeared for Mr. Motsepe, accepted that items 3 to 16 in the schedule could no longer reasonably be sought, since Ms. Mulaudzi could only have the documents specified in those items in her capacity as chief executive of the Board. Since Ms. Mulaudzi is no longer the Board’s chief executive, she no longer possesses or controls the documents, and, for that reason, can no longer be expected to discover them.
- 3 The remaining items in the schedule specify documents that are said to be relevant to assessing Ms. Mulaudzi’s personal income and wealth (items 1, 2 and 18 to 23), and to working out whether she had anything to do with disseminating the defamatory matter outside the meeting in which it was published (item 17). In the first place, it was submitted that Ms. Mulaudzi’s particulars of claim went beyond the usual pursuit of general damages for injury to dignity, and sought a specific amount for patrimonial loss caused by damage to her reputation. If that was so, Mr. Sikhakhane argued, then Ms. Mulaudzi’s wealth and earning capacity were relevant to the assessment of her damages. Secondly, it was submitted that, if she had a hand in publicising Mr. Motsepe’s defamatory remarks, then the nature and extent of the steps

she took to disseminate the defamatory material were relevant to any quantum of damages to which she may ultimately be entitled.

4 I am convinced of neither of these propositions. While it is appropriate in principle to claim for patrimonial loss caused by a defamatory publication (see *Economic Freedom Fighters and others v Manuel* 2021 (3) SA 425 (SCA), paragraph 91), such a claim must be pleaded. If it is not pleaded, then damages arising from the claim may not be awarded. Ms. Mulaudzi's particulars of claim do not seek recompense of that sort. Paragraphs 16 and 17 of her particulars of claim can only sensibly be read to claim for sentimental damages arising from injury to her dignity. Her income and wealth are accordingly irrelevant to any issue defined in the pleadings, and documents sought for the sole purpose of assessing her financial worth are not discoverable.

5 Item 17 of Mr. Motsepe's schedule seeks "[a]ll records relating to both [Ms. Mulaudzi's] business and personal cellular phone usage including short messages (SMSs), call log[s], WhatsApp's messages, telegrams, messages for the period from [Ms. Mulaudzi's] employment date [at the Board] to present". Mr. Sikhakhane submitted that these records are requested to prove an allegation in Mr. Motsepe's plea that Ms. Mulaudzi was herself responsible for any dissemination of Mr. Motsepe's remarks beyond the meeting. Leaving aside the startling overbreadth of records sought, none of the material referred to in item 17 is discoverable, because it would at best tend to prove or disprove a fact that Ms. Mulaudzi never placed in issue. In other words, Ms. Mulaudzi's particulars of claim, properly construed, do not allege that Mr. Motsepe

disseminated his remarks outside the meeting. There was, accordingly, no need for Mr. Motsepe to deny that allegation in his plea.

6 Neither party specifically alleges that Mr. Motsepe's utterances about Ms. Mulaudzi were disseminated beyond the meeting at which they were made. Mr. Sikhakhane argued that paragraph 13 of the particulars says that Mr. Motsepe's utterances were "distributed", which implies, so it was submitted, that he disseminated them beyond the meeting. I do not agree. Paragraph 13 of the particulars cannot reasonably be read as an allegation that Mr. Motsepe "distributed" his *prima facie* defamatory remarks outside the 15 November 2019 meeting. The use of the word "distributed" is, I accept, odd to the point of being inapt, but what is really meant by the sentence is that Mr. Motsepe's remarks "were understood by the person[s] to whom they were distributed to impute that [Ms. Mulaudzi] consistently, and over a period of time, [was] failing to uphold . . . professional standards" (particulars of claim, paragraph 13). The point is not to allege that Mr. Motsepe "distributed" his remarks beyond the meeting, but rather to allege that his remarks in the meeting would have lowered Ms. Mulaudzi in the esteem of anyone who heard them. That is something different.

7 For all these reasons, none of the material sought in the schedule is discoverable. It is either no longer in Ms. Mulaudzi's possession or is irrelevant to the issues defined in the pleadings. The application to compel discovery must fail.

8 I am not inclined to make any costs order. Although Mr. Motsepe has been unsuccessful, the manner in which Ms. Mulaudzi has defended the application

leaves much to be desired. No heads of argument were filed on her behalf. Ms. Mulaudzi's counsel, Mr. Mamabolo, brought – albeit without much enthusiasm – a wholly meritless application to postpone the application when he placed himself on record for Ms. Mulaudzi at the outset of the hearing before me. Having been given extra time to prepare to argue what was a very straightforward application, none of Ms. Mulaudzi's legal representatives were of much assistance when the matter was finally argued.

9 The application is dismissed, with each party paying their own costs.



S D J WILSON
Judge of the High Court

This judgment is handed down electronically by circulation to the parties or their legal representatives by email, by uploading it to the electronic file of this matter on Caselines, and by publication of the judgment to the South African Legal Information Institute. The date for hand-down is deemed to be 22 April 2025.

HEARD ON: 15 April 2025

DECIDED ON: 22 April 2025

For the Plaintiff: KC Mamabolo
Instructed by Mohlala Attorneys

For the Defendant: M Sikhakhane SC
NC Motsepe
Instructed by Mogwasa and Associates