IN THE HIGH COURT OF SOUTH AFRICA

KWAZULU-NATAL DIVISION, PIETERMARITZBURG

CASE NO.: 7449/24P

In the matter between:

LIBERTY GROUP LIMITED **APPLICANT**

and

SIYABONGA CHONCO **FIRST RESPONDENT**

SIYAKUTANDA MAFUNA **SECOND RESPONDENT**

ORDER

In the premises the following order is made:

1. The respondents are interdicted from:

1.1. Publishing or distributing, to any 3rd party, any defamatory and false statements concerning the applicant, Liberty Group Limited, its employees, agents, or associates, including, without limitation, its shareholder, Standard Bank, and any employees or representatives of Standard Bank;

1.2. Publishing or distributing, on any social media or online platforms, including but not limited to Facebook, X (formerly Twitter), LinkedIn, WhatsApp and Instagram, any defamatory or false statements or allegations concerning the applicant, its employees, agents, or associates, including Standard Bank and its employees or representatives;

1.3. Engaging in any form of harassment directed at the applicant's executives, employees, agents, or associates, including Standard Bank and its employees or representatives whether in person, via any means of any communication, or via posts on any social media or similar platforms;

2. The respondents are directed to remove and delete all social media posts, comments, or publications which have been made about the applicant , its employees and associates, including Standard Bank and its employees or representatives, that have already been published on any social media or similar online platforms;

3. The respondents are ordered pay the applicant's costs on scale B, jointly and severally, the one paying the other to be absolved.

JUDGMENT

Mathenjwa J

Introduction

[1] This is an application for interdict based on defamatory statements allegedly made by the first and second respondents about the applicant and its employees on a social media and to different people in the business world. The first respondent was formerly employed by the applicant as a branch manager at its Kloof branch in Durban and the second respondent was formerly contracted by the applicant as a financial advisor.

Factual background

[2] In August 2023, the applicant received complaints about conduct of the first respondent. This prompted the commencement of a forensic investigation against the first respondent. Following the outcome of the investigation, the first respondent was suspended on 5 December 2023, pending the outcome of a disciplinary process. The matter proceeded to arbitration in terms of s 188 of the Labour Relations Act 66 of 1995. The arbitration was held before an independent arbitrator who ruled in favour of the applicant and found the first respondent guilty on all the charges against him. Subsequently, the first respondent's employment with the applicant was terminated.

[3] The second respondent was contracted to the applicant as a financial advisor from 1 May 2017 to 31 March 2024 when her contract with the applicant was terminated. The second respondent's contract provided for a 30-day notice period. On 20 February 2024, the applicant gave the second respondent notice of termination.

[4] During the first respondent's period of suspension until his eventual dismissal by the applicant, he began publishing and distributing defamatory statements and allegations on the various social media platforms about the applicant, its employees, and the Standard Bank Group, the shareholder of the applicant. Similarly, after termination of the second respondent's contract with the applicant, she made defamatory statements in the social media about the applicant.

The defamatory nature of the messages

[5] Between 11 and 22 March 2024, the first respondent published articles about the applicant on various social media platforms. Among these, the first respondent published a comment on a facebook status update by Asanda Sibiya, who is the daughter of a former financial advisor of the applicant, Ms Mavundla, in the following terms:

'I was accused, charged and fired on hearsay evidence and I didn't know that you had another member in your corruption team. Mafuna Siyakuthanda [the second applicant] deserve justice and Liberty has defeated the ends of justice. You are aiding criminals. Shame on you, the public needs to know your corrupt practices.'

In response to a status update posted by Asanda Sibiya on social media platform X, the first respondent posted the following comment:

'Liberty Group SA. This is a lie and you need to tell the people the truth. This company does not care about human rights. A young professional @m[...] was violated inside this organisation, she was cleared of hearsay accusations against her then terminated without a reason.'

The first respondent posted the following post on his facebook which contained the photograph of Asanda Sibiya:

'This girl says that she can prove Liberty is not corrupt!!! She also accused me and referenced Liberty as place where she received her evidence. Liberty is still quite.'

The first respondent further posted the following on facebook:
'The Global CEO of Standard Bank is a feminist. Standard Bank is the parent company of Liberty Group. Could that explain why I was fired without evidence because a female said so?'

[6] The first and second respondents exchanged comments publicly on facebook where the first respondent stated that:
'Mafuna Siyakuthanda the CEO is a feminist'. The second respondent replied and stated that: 'Siya Chonco I can see by how he handled your matter. It was all in the name in saving a woman onamanga… We will seek answers until they come clean!!! Ngeke bayivale yonke iminyango…I am now waiting for Sim Tshabalala to deny me ever coming to ask him for help before this whole internet mess…'

The second respondent then posted a comment on Mr Tshabalala's LinkedIn post where she stated the following:
'Sim Tshabalala I am very shocked to learn you have a wife and 2 daughters. Can you please address the fact that I escalated my human rights violation matter all the way to you and you looked away? You never even cared to respond on numerous emails from both myself and Siya Chonco being violated under your watch. Why are you not honest to public? Is this working with honesty and integrity? I have been asking for help. You and your entire team look away. Please attend to my matter as I am still crying for help.'

[7] The second respondent posted the following on her WhatsApp status about Bayanda Mkhize, the regional executive for KwaZulu-Natal applicant's advisory partners.
'Bayanda Mkhize you violated me and then terminated my contract after busting your corrupt conduct. You are a danger to society and the public needs to know who really are. Stop hiding behind the brand. You are a woman abuser. Sue me!!!'.
She also posted an article on WhatsApp stating that the applicant was a 'scam' and a 'trash'.

Again, the second respondent's WhatsApp status was updated with the following:
'I challenge Liberty and Standard Bank to deny all allegations against them. I will no longer be silenced. I have been quiet for too long. The time to answer to the public about your corrupt ways is now.'

[8] Pursuant to having received notice of the posts published by the respondents, the applicant instructed its lawyers to address letters of demand to both respondents, demanding that they desist from making defamatory statements about the applicant and the Standard Bank Group. The first respondent replied and told the applicant that he would not comply with the terms of the demand and the second respondent indicated to the applicant that she had deleted all the comments which had been made by her on social media. Despite her undertaking to the contrary, the second respondent transmitted messages on LinkedIn to several prominent individuals in the business world in which she stated the following:
'STD Bank//Liberty Group Corruption Bust Alart.
Good day
I trust you are well and in good health. NB. I sent Nonkululeko Nyembezi the same message via LinkedIn. I was not aware that Thulani Gcabashe is no longer the Chairperson of the Group. I am sure that all of you who were copied on this email do know who I am and who Siya Chonco is. We were both terminated illegally and without evidence. NB: @ S[...]@ s[...] and@ M[...]. Yuresh are fully aware of this case. We brought the matter to their attention while the case was ongoing and they both looked the other way…'

[9] It is common course that the first and second respondents were involved in romantic relationship which the first respondent described as a committed relationship. The first and second respondents do not dispute that they published the statements in question. Instead, they pleaded that the statements are true and were published in the public interest, or otherwise constitute fair comment.

[10] According to the respondents, the statements are attributable to the applicant as a result of its employees conduct performed in furtherance of the applicant's interests and in the course and scope of their employment. The first respondent

states that the dispute with the applicant commenced when his former subordinate, Ms Mavundla, lodged a grievance against him, relating to her feeling demotivated. The first respondent alleges that Ms Mavundla had failed to exercise due diligence and care when performing her duties. He states that he thereafter scheduled a mediation meeting between himself and Ms Mavundla. At the end of the mediation, Mr Mkhize recorded that it was evident that the working relationship between the first respondent and Ms Mavundla was completely broken down and he recommended that both parties enrol for communication, diversity and conflict management. The first respondent, however, disputed Mr Mkhize's mediation report on the basis that he was not getting his support regarding the poor performance of Ms Mavundla. The first respondent contended Ms Mavundla had fabricated numerous falsehoods about him. As a result, this culminated in the applicant's refusal to pay him benefits to which he claimed entitlement. He contended that the applicant unjustifiably withheld such benefits on the basis that he had been dismissed, thereby rendering him ineligible. Additionally, the first respondent averred that the applicant had conducted a forensic investigation against him. The result of that investigation was not disclosed to him prior to his dismissal.

[11] The first respondent contended that when the applicant referred the dispute to arbitration it did that without his consent. The applicant proceeded with the arbitration in his absentia. According to the first respondent, the charges were trumped against him and the applicant's only witness at the hearing was its compliance officer who had no factual knowledge of the charges proffered against him. He further asserts that the applicant was not consistent in applying its employment policies. In support of this contention, he states that there had been a security breach to the second respondent's emails. Although the second respondent's dismissal letter records that she was dismissed on 19 March 2024, in fact she was effectively removed from all applicant's systems in 1 March 2024. Although the second respondent made contributions to Provident Fund and Unemployment Insurance fund when she asked for those benefits to be paid she was informed by the applicant that these benefits were not due to her. Regarding the comments he made about Asanda Sibiya as an agent, the first respondent contended that that resulted from Asanda's conduct attributed to the applicant as a result of her mother's (Ms Mavundla) employment or association with the applicant.

[12] The issues for determination in this matter are; firstly. whether the respondents succeeded to prove that the articles they published were true, for public benefit, alternatively whether the articles constitute fair comment. Secondly, whether the applicant has succeeded in proving that that the requirements of a final interdict has been met

[13] Ms *Bosman* for the applicant submits that the statements made by the respondents are unlawful because they were intended to injure the applicant's reputation and to cause harm to its business. It was submitted on behalf of the applicant that the statements are not true and are not published for benefit of the public nor they constitute fair comment. The respondents, it is contended, are disgruntled at the manner in which they were treated by the applicant when their services were terminated.

[14] Ms *Qono* for the respondents submitted that the statements made by the respondents are not wrongful. It is argued that the statements arose in response to a series of actions by the applicant's employees and agents, which were allegedly directed against the respondents and culminated into termination of their employment with the applicant. According to the respondents, the applicant terminated their services without evidence and the applicant violated the second respondent during the period of August 2023 to March 2024. Counsel for the respondents further contended that the remedy of an interdict is not appropriate in the present case because the alleged infringement of applicant's rights has already occurred. It was submitted on behalf of the second respondent that she complied with the letter of demand and deleted all the statement published by her.

Analysis and applicable legal principles

[15] It is apposite that the respondents have conceded the defamatory nature of the publications. In an attempt to justify what are prima facie wrongly published publications, the respondents relied on two defences. Firstly, that the statements constitute a publication of the truth in the public interest, and secondly, the publications represent fair comment. The respondents bear the onus of establishing

these defences.[1] It is common cause that the first respondent's dismissal and second respondent's termination of contract directly gave rise to the publication of the contested statements. It is clear that the exchange of publications between the respondents clearly indicates their mutual involvement in making statements about each other's termination of employment with the applicant. Both respondents' defences against the defamation claims are based on the treatment they received from the applicant during their employment, culminating in the termination of their respective services by the applicant. For these reasons, the disputes between the parties may be classified as labour practice disputes.

[16] It is not within my terrain to make a finding about the unfairness of applicant's labour practice against the respondents. A fair labour practice is enshrined in the Constitution and guaranteed to all individuals,[2] and respondents are entitled to pursue their complaint about the applicant's unfair labour practice in a correct forum established by the legislation for that purpose. However, the fact that there is a forum where the respondents can ventilate the grievances about the unfair labour practice does not bar them from making statements about their experience in the employment of the applicant, provided those statements are true, made in the public interest, or constitute fair comment.[3] In order to determine whether the publications are true or constitute fair comment, it is necessary to examine the substance of the publications against the facts that are alleged to be true or constitute fair comment. The substance of the publications must be determined objectively with reference to a reasonable reader. As established, 'It is the meaning that the reasonable reader of ordinary intelligence would attribute to the words read in the context of the article as a whole'.[4] It is trite that the ordinary and natural meaning of the words takes account of not only what the words expressly said, but also of what they imply.[5]

[17] The reasonable reader would understand the statement in its context.[6] Given the scourge of violence against women, the statements published by the second respondent that Mr Mkhize violated her; he was a 'woman abuser', and describing

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[1] *Media 24 Limited t.a Daily Sun and Another v Du Plessis* [2017] ZASCA 33 para 10.
[2] Section 23(1) of the Constitution of the Republic of South Africa 1996.
[3] *Media 24 Limited* above fn1 para10.
[4] Ibid.
[5] Ibid para 15.
[6] *Le Roux and Others v Dey* [2011] ZACC 4; 2011 (3) SA 274 (CC); 2011 (6) BCLR 577 (CC) para 89.

him as a danger to the society would be interpreted by a reasonable reader as to imply that Mr Mkhize has done an act of gender-based violence that is likely to result in physical, sexual or psychological harm to the second respondent. Such statements further suggest that he has committed conduct that disproportionately affects woman and constitutes a serious societal offence .

[18] The reference to Mr Mkhize as a 'danger to society' would, in the mind of a reasonably reader, imply that he imposes a significant threat of harm, injury, or even death to others. Given the applicant's operates in the provision of financial services, including long-term and short-term insurance investment and asset management, the statements that the applicant is a 'scam' would mean that the applicant is a dishonest scheme to gain money or possessions from someone fraudulently and the word 'trash' would convey that it is worthless, of no value, or equivalent to refuse. The statement that Ms Sibiya was aiding criminals would be interpreted to imply is complicit in or directly involved in criminal activities, thereby gravely questioning its integrity and lawfulness.

[19] It is noteworthy the first and second respondents do not explain as to how or when the first respondent was 'violated' by Mr Mkhize, nor have they substantiated the basis on which he is alleged to be 'a danger to the society'. The statements published by the respondents, stating that the applicant or its employees are 'criminals', that the applicant is a 'trash' or 'scam' and that Mr Mkhize is a 'woman abuser' are insulting and plainly defamatory in the sense that they would tend to lower the applicant and its employees 'in the estimation of the ordinary intelligent or right-thinking members of society'.[7] Despite the seriousness of these allegations, the respondents have not placed any evidence or adduce any facts material to suggest that the applicant and its employees were criminals, that the applicant is operating a fraudulent scheme, a 'trash', or that Mr Mkhize was a 'woman abuser'.

[20] With regard to the defence of truth and publication for public interest the court held as follows in *Modiri v Minister of Safety and Security*:[8]

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[7] *Hix Networking Technologies v System Publishers (Pty) Ltd and Another* 1997 (1) SA 391 (A) at 403.

[8] *Modiri v Minister of Safety and Security and Others* [2011] ZASCA 153; 2011 (6) SA 370 (SCA); [2012] 1 All SA 154 (SCA) para 22.

‘Under the rubric of truth and public benefit, the balancing act turns mainly on the element of public interest or benefit. If a defamatory statement is found to be substantially untrue, the law does not regard its publication as justified. Publication of defamatory matter which is untrue or only partly true can never be in the public interest, end of story.’

Although the respondents contended that the termination of the second respondent’s services was wrongful, they do not dispute that her contract of employment made provision for termination on a month’s notice, and that the applicant complied with this requirement by furnishing her with the requisite notice prior to the termination of her services. Furthermore, although the respondents contended that the second respondent was subjected to disciplinary proceedings arising from false allegations made against her that she engaged in sexual intercourse with the first respondent in the office, they also alleged that the disciplinary proceedings instituted by the applicant cleared the second respondent of these charges. That contradicts the respondent’s version that the second respondent was ‘violated’ because the applicant constituted a disciplinary hearing, afforded her an opportunity to respond, and ultimately cleared her of any wrongdoing or misconduct. Furthermore, the allegations that Mr Mkhize was a ‘woman abuser’ is not in agreement with a separate allegation that the Chief Executive Officer (‘CEO’) of Standard Bank is a feminist who allegedly influenced the dismissal of first respondent on that basis alone.

[21] Although the respondents are not prohibited from making statements about unfair labour practices in the work place, the appropriate forum for ventilating such grievances, particularly serious allegations relating to violations of employee rights, is the Commission for Conciliation, Mediation and Arbitration (‘CCMA’) or the Labour Court . The decision by the first respondent to publish these statements about serious grievances on social media instead of taking them to the correct forum for resolution, further cast doubt on the truthfulness of these allegations. Even assuming that certain aspects of the respondents’ allegations may contain elements of truth, the language used in their publications, describing the applicant or its employees as ‘criminals’, referring to the applicant as ‘trash’ and ‘a scam’, labelling Mr Mkhize a ‘woman abuser’, and asserting that employees are dismissed simply because the

CEO of Standard Bank is a feminist, are grave insults not even rationally related to the unfair labour practices the respondents have stated. For these reasons, the respondents have failed to prove that the publications are true and for the benefit of the public.

[22] It is necessary to examine the defence of fair comment because the applicant in its answering affidavit stated that the publications constitute fair comment. The legal principle applicable to the defence of fair comment in defamation was restated by the Constitutional Court in *Democratic Alliance v African National Congress*[9] where at paragraph 70, Zondo J cited, with approval, from *Roos v Stent and Pretoria Printing Works, Ltd*[10] where Innes CJ quoted the following statements by Lord Justice Fletcher Moulton in *Hunt v Star Newspaper Co:*[11]

'The law as to fair comment, so far as is material to the present case stands as follows: In the first place, comment, *in order to be justifiable as fair comment must appear as comment* and must not be so mixed up with facts that the reader cannot distinguish between what is report and what is comment. The justice of this rule is obvious. *If the facts are stated separately and the comment appears as an inference drawn from those facts, any injustice that it might do will be to some extent negatived by the reader seeing the grounds upon which the unfavourable inference is based. But if fact and comment be intermingled, so that it is not reasonably clear what portion purports to be inference, he will naturally suppose that the injurious statements are based on adequate grounds known to the writer, though not necessarily set out by him. In the one case the insufficiency of the facts to support the inference will lead fair-minded men to reject the inference. In the other case, it merely points to the existence of extrinsic facts which the writer considers warrant the language which he uses.'*

[23] It is trite law that, a requirement that the comment sought to be protected must qualify as an honest genuine expression of opinion relevant to the facts upon which it was based, and not disclosing malice.[12] In the present matter, it is not in

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[9] *Democratic Alliance v African National Congress and Another* [2015] ZACC 1; 2015 (2) SA 232 (CC); 2015 (3) BCLR 298 (CC).

[10] *Roos v Stent and Pretoria Printing Works, Ltd 1909 TS 988 at 999*.

[11] *Hunt v Star Newspaper Co* [1908] 2KB 309 at 321.

[12] *The Citizen 1978 (Pty) Ltd and Others v McBride* [2011] ZACC 11; 2011 (4) SA 191 (CC); 2011 (8) BCLR 816 (CC) para 103.

dispute that the respondents are aggrieved by termination of their services by the applicant. However, the respondents have failed to clearly distinguish the facts upon which they rely from the comments supposedly based on those facts . Therefore, it cannot be determined from the publications what factual foundation, if any, underlies the opinions expressed. Therefore, in the absence of a clear separation between the fact and statements, and without a demonstratable factual basis, the respondents have failed to establish that the disputed publications constitute fair comment within the meaning of the law.

[24] The importance of the right of freedom of expression cannot be down played in a democratic society like ours. It is constitutive of the dignity of a human being and enables the citizens to participate effectively in public life without being stifled.[13] However, the freedom of expression does not override other values enshrined in the Constitution including the value to dignity.[14] The respondents' right to freedom of expression does not weigh heavier than the applicant and its employees right to dignity. In this regard, the law of defamation seeks to protect the value of human dignity and to ensure that human dignity and reputation is not violated in the exercise of freedom of expression.[15]

[25] I do not agree with the respondents' counsel submission that the publications made by the respondents constitute a past violation and, as such, the relief sought for interdict is no longer applicable to the matter. It is correct that the second respondent made an undertaking that she would delete all the publications, but despite the undertaking she further published the article to various people titled 'STD Bank//Liberty Group Corruption Bust Alart'. It is clear that the second respondent was still continuing with the publications. The first respondent had categorically refused to refrain from making the publications. It is settled law that the requirements for a final interdict are stated as '(a) a clear right; (b) an injury actually committed or reasonably apprehended; and (c) the lack of an adequate alternative remedy'.[16] In this matter, the injury to the applicant's reputation has already occurred through the

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[13] *Khumalo and Others v Holomisa* [2002] ZACC 12; 2002 (5) SA 401; 2002 (8) BCLR 771 para 21.
[14] Ibid para 25.
[15] Ibid para 28.
[16] *Masstores (Pty) Limited v Pick n Pay Retailers (Pty) Limited* [2016] ZACC 42; 2017 (1) SA 613 (CC); 2017 (2) BCLR 152 (CC); [2017] 1 CPLR 1 (CC) para 8.

publication of defamatory statements. Further, the risk of continued harm is reasonably apprehended when the second respondent published an additional article after making an undertaking that she has deleted the publication and the first respondent refusal to delete and stop publishing the articles. In the circumstances, the applicant has satisfied all the requirements for the grant of an interdict.

[26] The applicant had first caused a letter to be addressed to the respondents, requesting them to refrain from making the publications against it. Despite this demand, the respondents failed to comply. There is no other adequate alternative remedy that would protect the applicant from the harm caused by publication of the disputed statements. Therefore, the applicant is entitled to the relief of an interdict.

[27] There is no reason that the general principle that costs follow the results should not apply in this case. Given the complexity of the matter, the respondents should pay the applicant's costs on scale B.

Order

[28] In the premises the following order is made:

1. The respondents are interdicted from:

1.1. Publishing or distributing, to any 3rd party, any defamatory and false statements concerning the applicant, Liberty Group Limited, its employees, agents, or associates, including, without limitation, its shareholder, Standard Bank, and any employees or representatives of Standard Bank;

1.2. Publishing or distributing, on any social media or online platforms, including but not limited to Facebook, X (formerly Twitter), LinkedIn, WhatsApp and Instagram, any defamatory or false statements or allegations concerning the applicant, its employees, agents, or associates, including Standard Bank and its employees or representatives;

1.3. Engaging in any form of harassment directed at the applicant's executives, employees, agents, or associates, including Standard Bank and its employees or representatives whether in person, via any means of any communication, or via posts on any social media or similar platforms.

2. The respondents are directed to remove and delete all social media posts, comments, or publications which have been made about the applicant , its employees and associates, including Standard Bank and its employees or representatives, that have already been published on any social media or similar online platforms;

3. The respondents are ordered pay the applicant's costs on scale B, jointly and severally, the one paying the other to be absolved.

MATHENJWA J

Appearances

Applicant's counsel:	B Bosman
Instructed by:	Moodie and Robertson Attorneys Braamfontein
Locally represented by:	Sowell and Co. Pietermaritzburg
Respondent's counsel:	Z Qono
Instructed by:	Mthethwa and Associates Durban
Locally represented by:	Zasembo Mkhize Attorneys Pietermaritzburg
Date of hearing:	27 January 2025
Date of judgment:	25 April 2025