REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA
LIMPOPO DIVISION, POLOKWANE

CASE NO: 378/2010
(1) REPORTABLE: YES/NO
(2) OF INTEREST TO THE JUDGES: YES/NO
(3) REVISED.
DATE: 27/8/25
SIGNATURE

In the matter between:

MADIMETJA JOHANNES LEDWABA **PLAINTIFF**

and

MINISTER OF HOME AFFAIRS **DEFENDANT**

JUDGMENT

MULLER J:

[1] Madimetja Johannes Ledwaba[1] instituted action against the Minister of Home Affairs[2] for defamation. The amended particulars of claim[3] aver that the plaintiff, who is an officer in the employ of the Department of Correctional Services in Polokwane, was not paid his monthly salary on 15 June 2010. Upon enquiry, it was discovered that a death certificate had been issued by the defendant. The certificate incorrectly certified that Madimetja Johannes Ledwaba with identity number 7[...] had died on 9 October 2009 at Johannesburg due to natural causes. The plaintiff attended the offices of the defendant in Polokwane for the death certificate to be cancelled. He was advised to re-apply for a new identity document. The plaintiff re-applied, but he remained certified as deceased. It is alleged that the publication that the plaintiff is deceased was wrongful and defamatory of the plaintiff in that it was understood to convey that the plaintiff was a fraud or is dishonest or that he assumed another person's identity or that plaintiff is not the person he professed to be in real life and in his employer's records.

[2] As a result, his salary was discontinued which caused him not to undergo an operation as well as financial prejudice in that his accounts, investments and policies were stopped and his name submitted to the credit bureau as a defaulter by creditors. The plaintiff suffered emotionally because he separated from the mother of his minor children due to his inability to provide for his family.

[3] The defendant filed an amended plea. The defendant pleaded that whenever a death is reported, the informant will produce a death notice together with the identity document of the informant as well as the identity document of the deceased. Officials will enter the identity number of the deceased and issue a death certificate. When the death was reported, the identity number matched that of the plaintiff. On 1 June 1995 the birth of Madimetja Josias Ledwaba was registered and he was allocated an identity number.

[1] Hereinafter called "the plaintiff".
[2] Hereinafter called "the defendant".
[3] Dated 2 September 2024.

[4] The plaintiff previously never had an identity number. He applied for a re-issue of an identity document on 30 April 2001 and was informed that the identity number was allocated to Madimetja Josias Ledwaba. On 24 January 2002 the plaintiff was informed that the thumb print provided by him on the application is different from the records held by the defendant.

[5] The plaintiff applied again on 12 February 2002 for the issue (not re-issue) of an identity document. He submitted fresh finger prints on 22 February 2002. The plaintiff applied for a first application for an identity document and was issued with an identity document on 19 April 2002. On 1 November he applied for a name change on the identity number allocated to Madimetja Josias Ledwaba to change the name to Madimetja Johannes Ledwaba despite having had knowledge that the identity number was allocated to Madimetja Josias Ledwaba.

[6] On 14 October 2009 the mother of Madimetja Josias Ledwaba reported his death. The death certificate contained the names of the plaintiff because the plaintiff caused an amendment after being informed that the identity number belonged to Madimetja Josias Ledwaba.

[7] The plaintiff applied again for the late registration of his birth. On 10 August 2010 the plaintiff was issued with a new identity number.

[8] The defendant denied that it published the death of the plaintiff and pleaded that plaintiff was issued with a death certificate after he attended the office of the defendant when he was informed that his salary was frozen. The plaintiff published the content of the death certificate to other persons.

[9] It is also pleaded by the defendant that National Treasury froze the salary of the plaintiff due his status as being deceased. The moment a death is registered National Treasury is notified by the defendant who will block any activity associated with that

identity number. The Department of Correctional Services was also notified. The Department communicated with the plaintiff. The recreational club of the Department extended loans to the plaintiff on a monthly basis from June 2010 until August 2010. His salary was restored in September 2010 and backpay was paid to the plaintiff on 14 October 2010. The defence put up by the defendant is that publication of the statement was reasonable, if regard is had how the plaintiff acted from the time it was brought to his attention that his identity number had been duplicated with that of Mametja Josias Ledwaba.

[10] At close of the plaintiff's case an application for absolution was made on the basis that publication of a certificate certifying that the plaintiff had passed away is not defamatory. The application was dismissed on the ground that the statement is false of plaintiff and has capacity to be understood that plaintiff acted fraudulently by assuming the identity of someone else.

[11] I do not propose to deal with the evidence of all the witnesses in light of the conclusion that I have reached on the common cause facts. It is common cause that the defendant in the normal course of business notified National Treasury of all deaths being registered in the Republic. Such notification included a notice that the plaintiff had passed away as stated in the death certificate. National Treasury froze the salary of the plaintiff, and similarly notified the Department of Correctional Services who in turn notified the human resources section at Polokwane Correctional Centre when the human resources section at Polokwane made enquiries on behalf of the plaintiff why his salary had not been paid on 15 June 2010. The witness was informed that the salary of the plaintiff had been suspended due to his passing. The plaintiff is very well known to her for a number of years, and she, as a matter of fact, did not believe a word of it. She published the news to him. The plaintiff thereafter proceeded to the offices of the defendant in Polokwane where he applied for and was issued a death certificate that contained information that he had died in Johannesburg on 9 October 2009.

[12] In *Khumalo and Others v Holomisa*[4] the Constitutional Court described defamation as:

> "The law of defamation in South Africa is based on the *actio injuriarum*, a flexible remedy arising from Roman Law, which afforded the right to claim damages to a person whose personality rights had been impaired intentionally by the unlawful act of another. One of those personality rights that was protected by the law of defamation.
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> At common law, the elements of the delict of defamation are
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> (a) the wrongful and
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> (b) intentional
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> (c) publication of
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> (d) a defamatory statement
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> (e) concerning the plaintiff."[5]

[13] Publication of a defamatory statement is *prima facie* unlawful and intentional if it is published to a person other than the plaintiff. A defendant wishing to avoid liability must raise and rebut unlawfulness and intention.[6]

[14] An analysis of the amended plea reveals that the defendant despite a lengthy narrative pleads a privileged occasion that has arisen when a statement was published in the discharge of a duty or the protection of a legitimate interest to another person who had a similar duty or interest to receive to receive it.[7] The court is required to judge the situation by the standard of the reasonable man having regard to the relationship of the parties and the surrounding circumstances. The court in answering the question whether the statement is lawful must consider if public policy justifies publication of the statement.

[4] 2002 (5) SA 401 (CC).
[5] par 17-18.
[6] *Borgin v De Villiers and Another* 1980 (3) SA 556 (A).
[7] *De Waal v Ziervogel* 1938 AD 112, 121-3.

[15] The Birth and Deaths Registration Act[8] which regulates the registration of all births and deaths applies to all South African citizens, whether in or outside the Republic.[9] The Director-General is the custodian of all documents relating to both and deaths required to be furnished under this Act or any other law as well as all the records of any births and deaths preserved prior to the commencement of this Act.[10] The particulars obtained from the records shall be included in the population register[11]

[16] Section 7 makes provision for the Director-General to supplement or correct the particulars in the population register or a person may apply in the prescribed manner for the amendment or rectification of his/her particulars. Section 29 provides that:

> "(1) Subject to the provisions of subsection (2), no person shall publish or communicate to any other person any information obtained from documents or records mentioned in section 5(1), and which he or she acquired by virtue of his or her functions in terms of this Act or any other law, except for the purposes of this Act, judicial proceedings or the performance of functions in terms of any other law, and no person who has come into possession of any such information shall publish the information or communicate it to any other person.
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> (2) Notwithstanding the provisions of subsection (1), the Director-General may furnish any information in relation to a person submitted in terms of this Act to—
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> (a) any department of State, local authority or statutory body for any of the statutory purposes of that department, authority or body; or
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> (b) any person who has applied, in the prescribed manner, with a full exposition of the purposes for which the information is required and who has paid the prescribed fees, if any: Provided that the Director-General is satisfied that the furnishing of that information—

[8] Act 51 of 1992.
[9] Preamble and section 2.
[10] Section 5(1)(a) and (b).
[11] Section 5(2).

(i) will not amount to an unreasonable disclosure of that person's personal information as contemplated in section 1 of the Promotion of Access to Information Act, 2000 (Act 2 of 2000);

(ii) is for the protection of the rights, and in the interest, of the person whose particulars are being requested; or

(iii) is in the public interest"

[17] It is also common cause that the defendant, in the ordinary course of business, reports all deaths registered throughout the Republic to National Treasury, the purpose of which is to detect if recipients of state grants and government employees are deceased to prevent payment of grants and salaries to deceased persons.

[18] It serves a very important public function to detect and eradicate unauthorized expenditure, corruption and malfeasance in all government departments. There is no doubt that such information is reported to state departments by the defendant in the public interest.

[19] There can also be no doubt that information so furnished should not be false. However, a defence of qualified privilege is not concerned with the truthfulness or otherwise of the publication.

[20] The defendant published the statement to National Treasury who republished it to the Department of Correctional Services where the plaintiff was employed. The statement was republished to a recipient from human resources at the Polokwane Correctional Centre where the plaintiff was stationed when enquiries were made why the salary of the plaintiff was suspended. She republished it to the plaintiff, personally.

[21] The defendant, in my view, succeeded in proving that the statement was published in terms of a legal duty to provide information which is in the public interest to National Treasury who is required and entitled to receive the information. National Treasury republished the statement to the Department of Correctional Services, where the

plaintiff was employed, who was also required to receive the information in the normal course of business. The statement was republished by the Department of Correctional Services to the witness at human resources, who was also required to receive the information and who published it to the plaintiff personally. In all instances set out above, the publication was not intended to defame the plaintiff, but served a legitimate purpose, namely, the assimilation of information relating to deceased persons. It is in the public interest that payment of grants and salaries to deceased persons be frozen. I am of the view that knowledge of unlawfulness,[12] which is an integral element of *animus iniuriandi,* has been successfully rebutted on a balance of probability.

[22] The plaintiff obtained a death certificate from the office of the defendant in Polokwane. The information so obtained, therefore, was published to him personally. Publication to the plaintiff is not regarded as publication to establish liability for defamation.

[23] A great deal of time was devoted at the trial whether the statement was published to some of the plaintiff's colleagues, who according to the plaintiff, made jokes and demeaning remarks towards him, *inter alia* as being deceased. It is also common cause that the plaintiff wrote a letter to the club office on 16 June 2010 in which he had set out the unfortunate circumstances that caused his salary to be frozen. It has not been proven who published the statement to his co-workers. There are various possibilities since the plaintiff applied for financial assistance from their recreation club in a letter which could have come to the notice of any number of people at the Polokwane Correctional Centre.

[24] Republication by a third person creates a separate cause of action against that person and does not create vicarious liability.[13] Be that as it may, in *K v Minister of Safety and Security*,[14] the Constitutional Court plainly stated that:

[12] Wederregtelikheisbewussyn.
[13] *Hassen v Post Newspapers (Pty) Ltd* 1965 (3) SA 562 (W) 565.
[14] 2005 (6) SA 419 (CC).

"The common-law principle of vicarious liability holds an employer liable for the delicts committed by its employees where the employees are acting in the course and scope of their duty as employees. The principles ascribe liability to an employer where its employees have committed a wrong but where the employer is not at fault."[15]

[25] It was, therefore, necessary for the plaintiff, not only to allege that employees of the Minister were acting within the course and scope of their duty or that they were engaged with the affairs of their employer, in the amended particulars of claim, to hold the Minister liable, but also to prove that allegation. No such allegation to hold the Minister vicariously liable was made.[16] The failure to allege and prove that the Minister is vicariously liable is fatal to the plaintiff's cause of action against the defendant.

[26] In the result, the plaintiff's action falls to be dismissed.

ORDER

The action is dismissed with costs.

G.C MULLER

JUDGE OF THE HIGH COURT

LIMPOPO DIVISION, POLOKWANE

APPEARANCES

FOR THE PLAINTIFF : MR S. RANGOANASHA

[15] Par 21 and 24.

[16] Harms LTC *Amler's Precedents of Pleadings* 9th ed (2018) 370.

INSTRUCTED BY	**:**	**S. RANGOANASHA INC**
FOR THE DEFENDANT	**:**	**ADV M.T MATLAPENG**
INSTRUCTED BY	**:**	**STATE ATTORNEY, POLOKWANE**