

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

CASE NO: A605/2017

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

5 November 2015

DATE

MOKOSE SNI

In the matter between:

POLICE AND PRISONS CIVIL RIGHTS UNION

MATSEMELA, MATSEMELA

RAMALOBHE, DARIUS

MALATJI, SETLABOSWANA EDWIN

RAMALEPE, SELLO SAMUEL

1st Appellant

2nd Appellant

3rd Appellant

4th Appellant

5th Appellant

and

PHAHLANE, JOHANNES KHOMOTSO (LT-GEN)

Respondent

JUDGMENT

Coram: Raulinga J, Mokose J and Hassim J

[1] This is an appeal against the judgment of Monama J of 30 June 2017 in terms of which he upheld the respondent's claim for damages for defamation of the respondent's persona and award, jointly and severally against the appellants. The appellants now seek an order dismissing the respondent's claim with costs. Alternatively, the appellants seek an order replacing the award with an amount of R80 000 (eighty thousand rand) in the event that the court accepts the legal findings of the court *a quo*. The award of damages granted by Monama J was the sum of R350 000,00 (three hundred and fifty thousand rand).

[2] The appeal is opposed by the respondent.

[3] There was no appearance on the part of the third to fifth respondents, it being apparent that they had abandoned their appeal. The respondent also indicated that the interlocutory application in the appeal dated 17 July 2018 has been abandoned.

[4] The respondent, Lieutenant-General Khomotso Phahlane, sued the appellants for defamation of his persona on the backdrop of a media statement which had been issued by the first appellant on 7 September 2012. In the press statement it was alleged, *inter alia*, that the respondent had been responsible for various acts of corruption in the Forensic Science Laboratory which included concealing or doctoring crime statistics, declining to take action against an officer who had stolen drugs with a street value of R500 million, colluding with the same officer in respect of a charge of possession of rhino horn, sabotaging a fraud prosecution against a bogus doctor and declining to take any disciplinary action against a perpetrator of sexual harassment.

[5] The appellants admitted that the statement had been issued however, they contended that there was nothing untoward in the issue thereof and that the contents were true and fair in the circumstances and for the public benefit.

[6] Monama J found that the allegations in the press statement referred to the respondent and were defamatory. The defamation was also found to be widespread and awarded damages in the sum

of R350 000 together with interest thereon. Furthermore, the appellants (defendants in the court *a quo*) were ordered to publish an apology and a retraction of the article.

[7] The appellants seek an appeal on two grounds:

- (i) that the court incorrectly assessed the press statement in that the reasonable reader of the statement would not have understood the allegations as referring to Lt-Gen Phahlane having done anything wrong; and
- (ii) the damages were quantified by the court on incorrect facts and principles in that it relied on cases that had been settled on agreement between the parties and another that had been overturned on appeal. Alternatively, they are of the view that the damages awarded were excessive.

[8] The issues on hand are the following:

- (i) whether the court correctly found that the allegations in the press statement defamed the respondent; and
- (ii) whether the amount awarded by the court *a quo* was appropriate in the circumstances.

[9] The common law of defamation 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.¹ The elements of the delict of defamation are: (i) the wrongful; (ii) intentional; (iii) publication; (iv) of a defamatory statement; (v) concerning the plaintiff. The falseness of the statement is not an element of the delict. When the publication has been established concerning the plaintiff, it will be presumed that the publication is both unlawful and intentional. A defendant wishing to avoid liability for defamation must accordingly raise a defence which rebuts the unlawfulness of the action and intention.²

¹ Khumalo and Others v Holomisa 2002 (5) SA 401 (CC) at para 17

² Khumalo and Others v Holomisa (supra) at para 18

[10] One of the most common defences raised to rebut unlawfulness is that the publication was true and was in the public benefit. This was the defence of the first and second respondents that the newspaper articles were reasonable, were substantially true and were published for the public benefit.

[11] The appellants are of the view that the court *a quo* was obliged to make a two-stage enquiry to determine the ordinary meaning of the statement and thereafter determine whether it is defamatory in the circumstances. The test to be applied was an objective one to ascertain the meaning the reasonable reader of ordinary intelligence would attribute to the statement. The appellants further note that acronyms were used in the statement which are acronyms of positions and titles of members of the police services.

[12] A statement is defamatory of a plaintiff if it is likely to injure the good esteem in which he or she is held by the reasonable or average person to whom it has been published.³ In evidence it was ascertained that the statement was not published only to members of the SAPS but was addressed and published to the media and through it, the general public. This is so about all the allegations made in the statement as the respondent was the person targeted at the end of the press statement for immediate suspension. Members of the public would have no doubt that the person at the end of such statement was Lt-General Phahlane.

[13] I am satisfied that the court *a quo* was correct in finding that the allegations made in the statement were defamatory of Lt-General Phahlane and accordingly, this appeal fails in this respect.

[14] The second issue in the appeal is that whether the award was appropriate in the circumstances. The Supreme Court of Appeal in the matter of *Tsedu v Lekota and Another 2009 (4) SA 372 (SCA)* at para 18 held the following:

“The quantification of damages in an action for defamation falls within the discretion of the trial court and a court of appeal will interfere with an award only if it is tainted by misdirection.”

³ Le Roux v Dey 2011 (3) SA 274 (CC) at para 91

[15] It is evident from the record that the first and second appellants (defendants in the court *a quo*) failed to justify the allegations having closed their case without having testified. They merely admitted that they had made the statement and then closed their case. Monama J considered previous awards which he recognised provided only a guideline in making the award.

[16] No evidence has been given of there having been a misdirection on the part of Monama J in granting the award in the court *a quo*. The court's exercise of its discretion cannot be faulted.

[17] The respondent seeks an order against the appellants which shows the court's displeasure in the way that the litigation was conducted. Leave to appeal was granted more than 7 years ago and was not prosecuted until such time that an interlocutory application was made to have the appeal declared lapsed in November 2018, *inter alia*.

[18] The normal rule pertaining to an award of costs is that costs should follow the result. The court may, in certain circumstances award punitive costs to show its displeasure for the way the litigation was conducted. Having had regard to the way the litigation in this matter was conducted, I am of the view that punitive costs should be awarded.

[19] For the reasons as set out above, the following order is granted:

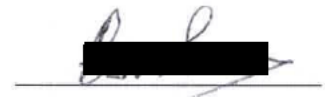
The appeal is dismissed with costs on a scale as between attorney and client.

A handwritten signature in black ink, appearing to be 'SNI MOKOSE J', is written over a horizontal line. The signature is stylized and somewhat cursive.

SNI MOKOSE J

Judge of the High Court of
South Africa, Gauteng Division,
Pretoria

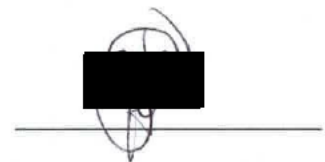
I agree,



J RAULINGA J

Judge of the High Court of
South Africa, Gauteng Division,
Pretoria

I agree,



S HASSIM J

Judge of the High Court of
South Africa, Gauteng Division,
Pretoria

Appearances:

For the first and second Appellants:

Adv ME Manala on instructions of CHSM Inc

For Respondent:

Adv B Winks on instructions of BDK Attorneys

Date of Hearing:

30 April 2025

Handed down on:

⁵/₄ November 2025