



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

(1)	NOT REPORTABLE
(2)	NOT OF INTEREST TO OTHER JUDGES

APPEAL CASE NO: A2025-025717

COURT A QUO CASE NO: 2020-14102

DATE: 17 SEPTEMBER 2026

In the matter between:

JASON MKHWANE

Appellant

and

ANDILE PHILIP DYAKALA

Respondent

Neutral Citation: *Mkhwane v Dyakala (A2025-025717) [2026] ZAGPJHC ---*
(17 September 2026)

Coram: Mali *et* Adams JJ *et* Van Nieuwenhuizen AJ

Heard: 28 April 2026

Delivered: 17 September 2026 – This judgment was handed down electronically by circulation to the parties' representatives *via* email, by being uploaded to *CaseLines* and by release to SAFLII. The date and time for hand-down is deemed to be 10:30 on 17 September 2026.

Flynote: Delict – defamation – truth and for public benefit and fair comment – defendant accusing Municipal Supply Chain Manager of having 'normalised

corruption’ and implying personal corruption – institutional procurement irregularities and irregular expenditure not, without more, proof of personal corruption – inference of personal corruption not justified by evidence as a whole – defence of truth and for public benefit not established –

Fair comment – defence not pleaded – unpleaded issue may be decided only where fully canvassed and no prejudice results – factual substratum for imputations that plaintiff was a ‘renowned bully’ and a ‘looter’ not established –

Appeal – factual findings – appellate deference to trial court – distinction between credibility finding and inference drawn from accepted facts –

Quantum of damages – professional accused of corruption – publication limited but professionally significant publication – R100 000 awarded for general damages – retraction and apology ordered as part of damages award –

Interest payable on damages awarded – from date of judgment of court *a quo* – Appeal upheld with costs.

Summary: The appellant, a Supply Chain Management Manager of a Local Municipality, sued the respondent, the Municipality’s Chief Financial Officer, for defamation arising from the publication by the respondent on a closed *WhatsApp* group of statements that the appellant had ‘normalised CORRUPTION’, describing him as a ‘renowned bully’, that the appellant’s attorney has ‘looted R52 million’ and that he did not ‘fight with looters’.

The court *a quo* held that the statements were defamatory but dismissed the appellant’s action, upholding the respondent’s truth and for public benefit and fair comment defences.

On appeal, the Full Court held that the defence of fair comment had not been pleaded. It also held that the evidence did not establish personal corruption. The defence of truth and for public benefit failed for lack of evidence.

Fair comment not pleaded as a defence and should therefore fail. In any event, the factual substratum necessary to justify the descriptions ‘renowned bully’ and ‘looter’ had not sufficiently been established.

The appeal was upheld and the quantum of appellant’s claim assessed.

JUDGMENT

On appeal from: The Gauteng Division of the High Court, Johannesburg (Wilson J sitting as Court of first instance):

- (1) The appellant's appeal against the order of the court *a quo* dated 15 July 2024 is upheld, with costs.
- (2) The order of the court *a quo* dated 15 July 2024 is set aside and substituted with the following:
 - '(1) It is declared that the statements published by the defendant concerning the plaintiff on the SCM Management *WhatsApp* group were defamatory and unlawful.
 - (2) The defendant shall pay the plaintiff the amount of R100 000 as general damages for defamation.
 - (3) The defendant shall pay interest at the applicable legal rate of 11.75% per annum on the amount R100 000 from 15 July 2024 (the date of the judgment of the court *a quo*) to date of final payment.
 - (4) Within ten days of service of this order, the defendant shall publish on the SCM Management *WhatsApp* group an unconditional written retraction and apology in respect of the defamatory statements concerning the plaintiff.
 - (5) To the extent that the defamatory statements remain accessible on any platform or *WhatsApp* group under the defendant's control, the defendant shall remove them within ten days of service of this order.
 - (6) The defendant shall pay the plaintiff's costs of the action, including the costs of Counsel where so employed.'
- (3) The respondent shall pay the appellant's costs of the appeal, including the costs of the application for leave to appeal to the court *a quo* and the costs of the application for leave to appeal to the Supreme Court of Appeal, all such costs to include the costs consequent upon the employment of Counsel on scale 'B' of the tariff referred to in Uniform Rule of Court 67A(3), read with rule 69

JUDGMENT

Mali J et Van Nieuwenhuizen AJ (Adams J concurring):

Introduction

[1] This is an appeal against the judgment and the order of Wilson J delivered on 15 July 2024, in terms of which the appellant's action for damages arising from defamation was dismissed with costs. The appeal is before this Court with leave of the Supreme Court of Appeal, granted on 4 December 2024.

[2] Mr Jason Mkhwane (Mr Mkhwane) is the appellant and was the plaintiff in the court a quo. Mr Andile Philip Dyakala (Mr Dyakala) is the respondent and was the defendant. For convenience, they are referred to in this judgment as the plaintiff and the defendant respectively.

[3] The dispute arises from a series of *WhatsApp* messages published by the defendant during December 2019 on a group with Group Name 'SCM Management'. The group comprised approximately ten managers and senior employees working within the Supply Chain Management division of the Emfuleni Local Municipality ('the Municipality'). The defendant was at the time the Municipality's Chief Financial Officer ('CFO'), while the plaintiff was its Manager: Supply Chain Management, and reported to the defendant.

[4] The plaintiff alleged that the messages conveyed, expressly or by implication, that he was corrupt; had 'normalised corruption'; associated with an attorney who had 'looted R52 million'; was a 'renowned bully'; and was a 'looter'.

[5] The defendant admitted publishing the messages but denied liability. The court a quo found the statements defamatory. It nevertheless dismissed the action after upholding the defences of truth and for public benefit and fair comment.

[6] The principal questions in this appeal are whether the aforesaid defences were properly available to the defendant and, insofar as they were, whether they were established on the evidence.

Factual Background

[7] The defendant had extensive experience in municipal finance. He was initially seconded to the Municipality as acting CFO and was subsequently permanently appointed. His evidence was that he encountered a municipality afflicted by financial instability, maladministration, irregular expenditure and serious deficiencies in procurement.

[8] The plaintiff had occupied the position of Manager: Supply Chain Management, since 2017 and had previously served as an assistant manager within SCM. He was also politically active and had occupied positions within regional structures of the African National Congress.

[9] The defendant testified that difficulties arose between him and the plaintiff concerning procurement controls and their respective understanding of the plaintiff's functions. According to the defendant, the plaintiff resisted measures which he sought to introduce to improve procurement controls and exercised improper influence over officials within SCM.

[10] Of particular significance was the defendant's evidence that, shortly after his arrival at the Municipality, the plaintiff took him aside and explained that he had a political 'mandate'. According to the defendant, this mandate was to ensure that businesses or persons favoured by the ruling party were appointed as municipal service providers. The defendant alleged that the plaintiff would introduce him to favoured service providers and that he understood the plaintiff to mean that political interests were to influence which businesses obtained municipal contracts. This evidence became central to the reasoning of the court a quo. Wilson J accepted that the conversation occurred substantially as described by the defendant.

[11] The defendant further alleged that the plaintiff interfered in procurement processes, resisted measures introduced to improve financial controls, exercised improper influence over junior managers and bullied officials who did not accede to his demands. The defendant relied additionally upon reports concerning irregular expenditure and procurement deficiencies at the Municipality, including the *Comperio Consulting* report and Auditor-General material.

[12] The plaintiff denied that he had ever told the defendant that he possessed a political mandate to direct municipal tenders to preferred service providers. He accepted that there had been irregular expenditure and procurement deficiencies within the Municipality, but denied that those matters demonstrated corruption on his part. The plaintiff also denied bullying anyone. His evidence was that the disputes between him and the defendant concerned reporting lines, operational matters and their respective functions.

[13] He distinguished his political activities from his professional career. His profession was procurement and supply-chain management. An accusation of corruption in that setting, he said, struck directly at his credibility and professional integrity.

The Impugned Publications

[14] The impugned communications included the following statement: 'Jason you have normalized CORRUPTION. Not under my WATCH ...'. They included further statements describing the plaintiff as a 'renowned bully'; referring to his attorney as having 'looted 52 million'; and stating that the defendant did not 'fight with looters'.

[15] The communications were published in a work-related SCM management group. The recipients were therefore not the public at large, but the plaintiff's professional colleagues, managers and subordinates. Publication was admitted.

The Pleadings

[16] The manner in which the defences were pleaded requires attention because the position differs in relation to the different defamatory imputations.

[17] Contrary to the broad proposition advanced in parts of the plaintiff's argument, truth and public benefit was expressly pleaded in relation to the allegation that the plaintiff had 'normalised corruption'. The amended plea alleged, inter alia, that the plaintiff, as Manager: SCM, had obligations relating to the prevention and correction of irregular procurement; that Auditor-General findings had identified deficiencies; and that the plaintiff had failed adequately to correct them. Importantly, paragraph 5.9 of the amended plea expressly alleged that '[t]he allegations that the Plaintiff has normalised corruption is the truth and was made in the interest of the public'.

[18] The defence of truth and public benefit in relation to 'normalised corruption' cannot therefore be rejected on the basis that it was not pleaded. The issue is whether it was proved.

[19] The position concerning the allegation that the plaintiff was a 'renowned bully' is different. The defendant pleaded that the allegation was true and set out conduct said to substantiate it. Fair comment was not pleaded as a distinct defence. Fair comment emerged only after the evidence had been completed. The court a quo invited the parties to address whether the defence arose from the evidence. The plaintiff objected to its introduction and contended that the trial had been conducted on a different basis.

The Judgment of the Court A Quo

[20] The court a quo held that the *WhatsApp* publications were defamatory. In particular, it found that a reasonable reader would understand the defendant to have implied that the plaintiff was personally corrupt. The defendant himself ultimately accepted that, in the context he had described, a reader would understand his messages as at least implying personal corruption.

[21] The court a quo also rejected the defendant's contention that he lacked *animus iniuriandi*. It considered the tenor of the messages to be intemperate, baiting and frustrated and found that the defendant intended to discredit and hurt the plaintiff. The court nevertheless upheld truth and public benefit. It found that the plaintiff was 'probably personally corrupt'.

[22] Central to the aforesaid conclusion was the defendant's evidence concerning the political-mandate conversation. The court also relied on the *Comperio* report and other evidence concerning procurement irregularities. Significantly, Wilson J recognised that the *Comperio* report's identification of the plaintiff as responsible for irregular expenditure was not the same as saying that he was personally corrupt and that the report principally criticised the plaintiff for deficiencies such as poor record-keeping. In relation to 'renowned bully' and 'looter', the court characterised the aforesaid expressions as evaluative opinions and upheld fair comment.

Issues on Appeal

[23] The principal issues are: (a) whether the defendant established the substantial truth and public benefit of the allegation that the plaintiff had normalised corruption and was personally corrupt; (b) whether the court a quo was entitled to uphold fair comment in relation to the remaining defamatory imputations; and (c) if liability is established, what relief and quantum of damages are appropriate.

Applicable Legal Principles

[24] The elements of defamation are the wrongful and intentional publication of a defamatory statement concerning the plaintiff. Once publication of defamatory material concerning the plaintiff has been established, wrongfulness and *animus iniuriandi* are presumed. The defendant bears the onus of establishing a recognised justification or otherwise rebutting the presumptions.

[25] Where truth and public benefit is relied upon, literal truth in every detail is not necessary. What must be established is the substantial truth of the material defamatory sting. The distinction is important in this case. The issue is not whether there were irregularities at the Municipality, but whether the evidence established the substantial truth of the personal allegation conveyed by the publication.

[26] Fair or protected comment is conceptually different. It requires an expression of opinion based upon facts which are true and which are either stated, sufficiently indicated or, in an appropriate case, sufficiently notorious to the audience.

[27] In *The Citizen 1978 (Pty) Ltd v McBride*¹, the Constitutional Court recognised that the factual basis need not invariably be recited in the publication where those facts are sufficiently notorious to those addressed.

Pleadings and the Disputes defined by the Parties

[28] Pleadings perform an important function. They define the issues which the parties have chosen to place before the court and inform how evidence is prepared, led and tested.

[29] In *Fischer and Another v Ramahlele and Others*², the Supreme Court of Appeal emphasised that courts ordinarily adjudicate the dispute defined by the parties rather than formulate a different dispute for them. The aforesaid principle is not absolute. An unpleaded issue may in appropriate circumstances be adjudicated where it has been fully canvassed and where no prejudice results. The enquiry is one of substance rather than form. (*Middleton v Carr*³ and *Minister of Safety and Security v Slabbert*⁴). The important question is whether the

¹ *The Citizen 1978 (Pty) Ltd v McBride* 2011 (4) SA 191 (CC).

² *Fischer and Another v Ramahlele and Others* 2014 (4) SA 614 (SCA).

³ *Middleton v Carr* 1949 (2) SA 374 (A).

⁴ *Minister of Safety and Security v Slabbert* [2009] ZASCA 163.

opposing party knew the case it was required to meet and enjoyed a proper opportunity to lead evidence and cross-examine on that case.

Appellate approach to Factual Findings

[30] Before considering the political-mandate evidence, it is necessary to recognise the proper limits of appellate interference with factual and credibility findings. In that regard, the *locus classicus* remains *R v Dhlumayo and Another*⁵. A trial court enjoys advantages which a court of appeal does not. It sees and hears witnesses and is immersed in the atmosphere of the trial. Findings substantially dependent upon credibility are accordingly not lightly disturbed.

[31] The principle is one of appellate restraint, not an inflexible rule. In *Bernert v Absa Bank Ltd*⁶, the Constitutional Court explained that the reluctance to interfere reflects the advantage enjoyed by the trial court in seeing and hearing witnesses. It does not preclude appellate interference where the conclusion cannot be sustained on the record. There is also an important distinction between a trial court's assessment of the credibility of a witness and the further inference to be drawn from facts which it accepts. The former ordinarily attracts particular deference. The latter must nevertheless be justified by the proved facts and probabilities viewed as a whole.

[32] It is therefore unnecessary and indeed undesirable for purposes of this appeal to hold that Wilson J was not entitled to accept the defendant's evidence that a conversation concerning a political 'mandate' occurred. Even accepting that evidence, however, the further conclusion that the plaintiff was 'probably personally corrupt', and that the defamatory sting was consequently substantially true, remained a conclusion which had to be justified by the evidence as a whole.

[33] It is at that stage of the reasoning that the difficulty arises. Evidence that the plaintiff sought to advance political preferences in municipal procurement, if

⁵ *R v Dhlumayo and Another* 1948 (2) SA 677 (A) at 705–706.

⁶ *Bernert v Absa Bank Ltd* 2011 (3) SA 92 (CC) para 106.

accepted, would unquestionably be serious and improper. But the question remains whether it established the substantially broader defamatory allegation of personal corruption.

The Allegation that the Plaintiff Normalised Corruption

[34] There can be no doubt that the Municipality experienced serious procurement and financial deficiencies. Institutional dysfunction, however, was not the defamatory sting which the defendant was required to justify. The sting found by the court a quo was personal: that the plaintiff had knowingly normalised corruption and was himself corrupt.

[35] The distinction between irregular expenditure and corruption is important. Irregular expenditure demonstrates non-compliance with applicable procurement or financial requirements. It does not without more establish dishonesty, bribery or corrupt intent.

[36] Wilson J himself acknowledged that the Comperio report's criticism of the plaintiff was not equivalent to a finding that he was personally corrupt. The documentary evidence therefore did not by itself prove the defamatory sting. The trial court's finding of personal corruption depended principally upon the political-mandate evidence.

The Political Mandate Evidence

[37] If the plaintiff told the CFO that municipal tenders were to be directed to businesses favoured by a political party, that would plainly constitute improper conduct and warrant serious criticism. The critical question is whether that evidence, together with the objective material, established the substantial truth of the accusation that the plaintiff was himself corrupt and had normalised corruption. Several considerations militate against the aforesaid conclusion.

[38] First, the alleged political mandate conversation was not identified in the defendant's detailed amended plea as part of the factual basis for the allegation

that the plaintiff had normalised corruption. The omission does not render the evidence inadmissible or require its rejection. It is nevertheless significant when one considers the weight the conversation ultimately assumed in the court a quo's reasoning. A direct statement that political interests were to dictate municipal procurement would have been amongst the most serious facts available to the defendant.

[39] Second, the contemporaneous documentary material did not establish that the plaintiff participated in any identified corrupt tender or transaction.

[40] Third, the material relied upon concerning irregular expenditure did not itself establish personal corruption.

[41] Fourth, the evidence concerning the political mandate remained general. No particular service provider was identified as having received a municipal tender through the plaintiff's intervention pursuant to the alleged mandate.

[42] Fifth, the defendant's own explanation of what he meant by 'normalising corruption' involved a broader institutional complaint: that maladministration, irregularities and corruption had become a tolerated status quo and that the plaintiff, as the head of SCM, had failed to correct it.

[43] That explanation illustrates the difficulty. A failure adequately to correct procurement irregularities may amount to poor administration, dereliction of duty or even serious misconduct. It does not necessarily establish that the official concerned is personally corrupt. The court a quo ultimately found the plaintiff 'probably personally corrupt' despite recognising the absence of proof of an identified corrupt transaction.

[44] In our view, that reasoning crossed the evidential gap between evidence capable of supporting serious criticism of the plaintiff's administration of SCM and proof of the more serious imputation of personal corruption.

[45] The defendant bore the onus. The enquiry was not whether there were legitimate grounds for criticism of the plaintiff, nor whether the Municipality was beset by irregular expenditure. It was whether the substantial defamatory sting – that the plaintiff had normalised corruption and was himself corrupt – had been established on a balance of probabilities.

[46] Even accepting the political mandate evidence, the evidence as a whole did not establish the aforesaid broader defamatory sting. The court a quo therefore erred in holding that substantial truth had been established.

Public Benefit

[47] There can be no doubt that the exposure of genuine corruption within a municipality is a matter of considerable public importance. A CFO may not only be entitled but may in appropriate circumstances be obliged to expose suspected corruption and maladministration.

[48] The aforesaid proposition does however not resolve the matter. Where truth and public benefit is the justification invoked, public benefit does not dispense with the requirement that the defamatory sting be substantially true. Once substantial truth was not proved, the defence could not succeed merely because municipal corruption is a matter of public concern.

The ‘Renowned Bully’ Statement

[49] The defendant pleaded that it was true that the plaintiff was a renowned bully and identified conduct said to substantiate the allegation. The court a quo did not, however, determine the allegation simply as a question of truth. It described the statement as opinion and upheld fair comment. Fair comment had not been pleaded.

[50] The fact that an unpleaded issue may sometimes be determined does not mean that the introduction of a distinct defence after the close of evidence is necessarily without prejudice.

[51] Fair comment raises questions different from a plea of truth: whether the impugned expression is comment rather than fact; what factual substratum supports it; whether those facts are true; whether they were stated or sufficiently known to the audience; and whether the opinion was honestly held. The aforesaid issues are capable of affecting the manner in which evidence is led and cross-examination conducted.

[52] The record moreover demonstrates that the plaintiff expressly complained during closing argument that fair comment had not been pleaded or canvassed at trial and that he would be prejudiced by its introduction. That complaint was repeated in the application for leave to appeal.

[53] The present case accordingly involved more than a mere change in legal nomenclature. In any event, the evidence did not adequately establish the factual foundation for describing the plaintiff as a 'renowned bully'. The defendant referred to complaints allegedly made by other employees. The aforesaid persons did not themselves give evidence establishing the conduct attributed to the plaintiff. The fact that complaints were conveyed to the defendant might explain why he formed a particular view. It did, however, not establish the truth of the underlying allegations.

[54] The adjective 'renowned' also added a particular sting. It suggested that bullying was an established or generally recognised characteristic of the plaintiff rather than merely the defendant's personal assessment of him. The aforesaid proposition was not established.

The 'Looter' Imputation

[55] The statement that the plaintiff's attorney had 'looted R52 million' was literally directed at the attorney, who is not a party to this litigation. Its significance lies in its context. Wilson J accepted that the statement was made to associate the plaintiff with 'looting' and imply that he was a 'looter'.

[56] To the extent that ‘looter’ constituted evaluative comment concerning the plaintiff, the same difficulty arises. The factual basis necessary to sustain the implication that the plaintiff himself looted, facilitated looting, or was properly to be characterised as a looter was not established.

Notorious Facts and Fair Comment

[57] The court a quo relied upon *McBride*⁷ for the proposition that the factual substratum of comment need not always expressly be stated where the relevant facts are notorious to the audience. The aforesaid proposition is correct but requires careful application. Members of the SCM WhatsApp group may have known that the Municipality was under financial pressure, that procurement irregularities existed, that the plaintiff had previously been suspended and that there was significant conflict between the plaintiff and defendant. It does not follow that they knew as notorious facts that the plaintiff had directed politically motivated tenders, bullied colleagues or participated in looting.

[58] General knowledge of institutional dysfunction cannot substitute for proof of the particular defamatory facts attributed to an individual. The reliance upon notorious facts therefore did not cure the deficiency in the factual foundation for the defence.

Animus Iniuriandi

[59] The court a quo rejected the defendant’s attempt to rebut the presumption of *animus iniuriandi*. There is no basis to interfere with that finding. The messages were not neutral reports of suspected misconduct. They were personal, confrontational and accusatory. The court a quo found that the defendant intended to discredit and hurt the plaintiff and was at least reckless as to the injury to his dignity. That finding is supported by the record.

⁷ *The Citizen 1978 (Pty) Ltd v McBride* 2011 (4) SA 191 (CC) supra.

[60] It is unnecessary to characterise the defendant's conduct as 'malice in the technical sense applicable to fair comment. Anger, hostility, *animus iniuriandi* and malice for purposes of defeating a defence of protected comment should not be conflated.

Conclusion On Liability

[61] The plaintiff established publication of defamatory statements concerning him. The defendant did not establish the substantial truth of the allegation that the plaintiff had normalised corruption or was personally corrupt.

[62] Fair comment had not been pleaded. Its introduction after the evidence had closed, raised legitimate procedural concerns and, in any event, the factual substratum necessary to sustain the defence in relation to the bullying and looting imputations was not sufficiently established.

[63] The defendant did not rebut the presumption of *animus iniuriandi*. The appeal must therefore succeed.

The Quantum of Damages

[64] The court a quo, having dismissed the action, did not determine quantum. This Court must accordingly do so on the evidence on the record.

[65] The assessment of general damages for defamation does not admit of precise calculation. In *Tsedu and Others v Lekota and Another*⁸, the Supreme Court of Appeal held that monetary compensation for defamation is not empirically measurable and that previous awards provide no more than general guidance. The same caution applies when comparable awards are considered. Each defamation occurs within its own factual and social setting.

⁸ *Tsedu and Others v Lekota and Another* 2009 (4) SA 372 (SCA) at para 25.

[66] The purpose of damages must also remain clear. They are not imposed to punish a defendant. They serve principally to compensate for impairment of dignity and reputation and to provide appropriate vindication.

[67] Relevant considerations include the seriousness of the defamatory allegation, the nature and extent of publication, the plaintiff's standing, the positions of the parties, the conduct and motives of the defendant, the impact of the publication and the presence or absence of an apology or retraction. The constitutional setting must also be recognised. Reputation and dignity are constitutionally protected, but so too is freedom of expression. A damages award must therefore vindicate the injured party without becoming punitive or disproportionate.

[68] Restorative relief may play an important role. In *Le Roux and Others v Dey*⁹, the Constitutional Court recognised the value of apology in restoring dignity and reputation.

[69] In *Economic Freedom Fighters and Others v Manuel*¹⁰, the Supreme Court of Appeal similarly recognised the relationship between retraction, apology and the appropriate assessment of damages.

[70] The accusation made in this case was exceptionally serious. Corruption is an accusation of dishonesty. When directed at a municipal official responsible for supply chain management, it strikes at the integrity central to the proper performance of the aforesaid office. The plaintiff's responsibilities concerned public procurement and expenditure of public money. The suggestion that he had 'normalised corruption' was therefore directly capable of undermining professional trust in him.

⁹ *Le Roux and Others v Dey* 2011 (3) SA 274 (CC).

¹⁰ *Economic Freedom Fighters and Others v Manuel* 2021 (3) SA 425 (SCA), [2020] ZASCA 172.

[71] The identity of the publisher aggravated the sting. The defendant was not an outsider or ordinary colleague. He was the Municipality's CFO and the plaintiff's line manager. An accusation by a CFO that the Manager: SCM was corrupt or had normalised corruption would naturally carry considerable weight amongst officials working within the Municipality's procurement and financial structures.

[72] The identity of the recipients was equally important. The proven publication was not widespread. The SCM WhatsApp group consisted of approximately ten members. This was not publication to a national newspaper readership, public social-media platform or the public generally. The limited numerical reach must be reflected in the award. However, the significance of publication cannot be assessed only by counting recipients. The recipients comprised the plaintiff's professional colleagues, managers and subordinates – the very persons before whom his reputation for integrity was particularly important. The publication was consequently limited in numerical extent but significant in its professional context.

[73] The plaintiff gave evidence concerning its personal and professional effect. He described living under a 'dark cloud' and wanting his name cleared of the allegations of corruption. Vindication of his professional reputation was a central purpose of the litigation. He also testified about the impact upon his family. His sister heard allegations about him on local radio and contacted him in distress.

[74] The evidence concerning radio and other subsequent dissemination must, however, be approached cautiously. The record does not establish on a balance of probabilities that the defendant caused or authorised the local radio broadcasts or every subsequent republication. Damages should therefore not be assessed as if the defendant himself published the defamatory allegations to a mass audience.

[75] The plaintiff's political profile is also relevant. He accepted that political life requires resilience and referred to having developed a 'thick skin'. That does not deprive him of protection of his reputation. More particularly, the defamatory allegation concerned corruption in his professional role in public procurement, not merely robust political criticism. No specific patrimonial loss was established. The plaintiff did not prove loss of employment, salary or a particular professional opportunity as a result of the WhatsApp publication. That factor moderates the amount of damages. On the other hand, the defendant did not publish a timely and unequivocal apology or retraction which might have assisted in restoring the plaintiff's standing.

[76] The plaintiff sought an apology and retraction. Their absence is relevant both to vindication and to the appropriate monetary award.

[77] Comparable cases offer broad guidance only. The gravity of the present allegation, the professional positions of the parties and the identity of the recipients distinguish this matter from an ordinary interpersonal insult. At the same time, the Court must avoid converting damages into punishment. The proven audience was limited, no patrimonial loss was shown, and mass republication cannot fairly be attributed to the defendant.

[78] Having regard to all these considerations, and to the complementary vindicatory effect of the retraction and apology ordered below, an award of R100 000, assessed as at the date of this judgment, is fair and reasonable. This award, in our view, appropriately recognises the seriousness of an allegation of professional corruption made by a CFO against his SCM Manager before the latter's colleagues and subordinates, while remaining proportionate to the limited proven reach of the publication.

Interest Payable on the Damages Awarded

[79] The plaintiff claimed interest at 9.75% per annum from the date of issue of summons until final payment. The damages awarded are, however, unliquidated general damages assessed as at the date of judgment.

[80] In *Minister of Police v Khedama*¹¹, the Constitutional Court confirmed that an award of interest on general damages requires consideration of the discretion conferred by section 2A(5) of the Prescribed Rate of Interest Act 55 of 1975. The issue is therefore not resolved merely by the date upon which summons was issued or served. Where general damages are assessed in current monetary terms at the date of judgment, retrospective interest may result in overcompensation unless the circumstances justify it.

[81] A sufficient separate basis has not been established in this matter for awarding interest on the R100 000 from the institution of the action. It is accordingly just that interest run at the prescribed rate from the date of the judgment in the court a quo to date of final payment.

Retraction and Apology

[82] Monetary damages are not the only means by which the plaintiff's dignity and professional reputation may be vindicated. The present case is particularly suited to restorative relief because the defamatory publication took place within an identifiable workplace group. A retraction and apology addressed to the same group is capable of restoring the plaintiff's standing before substantially the same persons before whom it was impaired.

[83] The plaintiff expressly sought a written apology and retraction in his amended particulars of claim. An unconditional retraction and apology should accordingly accompany the damages award.

Costs

[84] The plaintiff has achieved substantial success in the appeal and in the action. There is no reason to depart from the ordinary principle that costs follow the result.

¹¹ *Minister of Police v Khedama* 2026 JDR 3209 (CC), [2026] ZACC 27.

[85] Rule 67A requires the court, when making an order for party-and-party costs, to indicate the applicable scale in relation to Counsel's charges as contemplated in Rule 69. In determining the appropriate scale, regard is appropriately had to the complexity of the proceedings, the value and importance of the litigation and the nature of the issues requiring determination.

[86] The matter was of considerable importance to both parties. It involved a substantial record, competing factual versions, the proper limits of appellate interference with factual findings, the pleading and proof of recognised defamation defences, constitutional interests in reputation and expression, and the assessment of general damages.

[87] Those considerations justify costs above Scale A. They do not, however, warrant Scale C. The matter, while important and reasonably complex, was not of such exceptional legal or factual complexity as to justify the highest ordinary party-and-party scale. The scale of costs should also not be employed as an indirect punitive measure. Scale B is therefore appropriate in both the action and the appeal.

Order

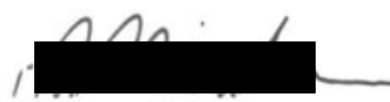
[88] In the result, the following order is made: -

- (1) The appellant's appeal against the order of the court *a quo* dated 15 July 2024 is upheld, with costs.
- (2) The order of the court *a quo* dated 15 July 2024 is set aside and substituted with the following:
 - '(1) It is declared that the statements published by the defendant concerning the plaintiff on the SCM Management *WhatsApp* group were defamatory and unlawful.
 - (2) The defendant shall pay the plaintiff the amount of R100 000 as general damages for defamation.

- (3) The defendant shall pay interest at the applicable legal rate of 11.75% per annum on the amount R100 000 from 15 July 2024 (the date of the judgment of the court *a quo*) to date of final payment.
- (4) Within ten days of service of this order, the defendant shall publish on the SCM Management *WhatsApp* group an unconditional written retraction and apology. To the extent that the defamatory statements remain accessible on any platform or *WhatsApp* group under the defendant's control, the defendant shall remove them within ten days of service of this order.
- (5) The defendant shall pay the plaintiff's costs of the action.'
- (3) The respondent shall pay the appellant's costs of the appeal, including the costs of the application for leave to appeal to the court *a quo* and the costs of the application for leave to appeal to the Supreme Court of Appeal, all such costs to include the costs consequent upon the employment of Counsel on scale 'B' of the tariff referred to in Uniform Rule of Court 67A(3), read with rule 69

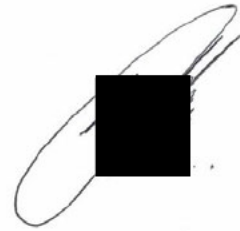


N P MALI
Judge of the High Court
Gauteng Division, Johannesburg



M VAN NIEUWENHUIZEN
Acting Judge of the High Court
Gauteng Division, Johannesburg

I agree,

A handwritten signature in black ink, consisting of a large, stylized 'L' and 'A' with a horizontal stroke, followed by 'R' and 'ADAMS'. The signature is written over a black rectangular redaction box.

L R ADAMS
Judge of the High Court
Gauteng Division, Johannesburg

HEARD ON:	29 April 2026
JUDGMENT DATE:	17 September 2026 – judgment handed down electronically
FOR THE APPELLANT:	T Ramogale
INSTRUCTED BY:	TTS Attorneys Incorporated, Melrose, Johannesburg
FOR RESPONDENT:	No appearance
INSTRUCTED BY:	Ntsoane Attorneys, Hatfield, Pretoria