

SOUTH AFRICA / JUDGMENT

Balintulo and Others v Mbana (79752/2019) [2025] ZAGPPHC 78 (31 January 2025) [2025] ZAGPPHC 78

COURT

North Gauteng High Court, Pretoria

BEFORE

E M Kubushi

CASE / FILE NUMBER

79752/2019

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IN

THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION,
PRETORIA)

Case No. 79752/2019

(1)

REPORTABLE: YES/NO

(2)

OF INTEREST TO OTHERS
JUDGES:

(3)
REVISED
DATE 31 JANUARY 2025
SIGNATURE
In

the matter between:

FUZILE
BALINTULO
First plaintiff
BUTI
MESHACK LESIELA
Second plaintiff
HERMANUS
KAREL BREEDT
Third plaintiff
and
LINDA
MBANA
Defendant

This matter was heard virtually (Ms teams) and disposed of in terms of the directives issued by the Judge President of this Division. The judgment and order are accordingly published and distributed electronically.

JUDGMENT

KUBUSHI J

- [1] The Defendant has taken an exception against the Plaintiffs' consolidated particulars of claim. In the consolidated particulars of claim the Plaintiffs allege that –

“On or about 4 July 2019, on SABC News, during an television interview that was broadcasted, the Defendant alleged that the Red Ant Security Relocation and Eviction Services (Pty) Ltd (hereinafter referred to as "the Red Ants") and/or the First Plaintiff as COO of the Red Ants and/or the Second Plaintiff as Deputy CEO of the Red Ants and/or the Third Plaintiff as Director / Manager of the Red Ants, allowed the Red Ants to . . .”

- [2] The Defendant served a notice in terms of Rule 35(14) on the Plaintiffs seeking a "transcript" of the interview of 4 July 2019. In response thereto, a copy of the interview was provided to the defendant on a USB disc. The Defendant transcribed the interview and wants the court to take the evidence in the transcribed interview into account when considering the exception.

- [3] The grounds of exception upon which the Defendant relies, are clearly and succinctly stated as follows:

“1. The Plaintiffs alleged in their consolidated particulars of claim that on 4 July 2019, on SABC News, during a television interview that was broadcasted, the Defendant alleged that the Red Ant Security Relocation and Eviction Services (Pty) Ltd ("Red Ants") and/or the Plaintiffs in their official capacities allowed the Red Ants to, . . .

2. The Defendant requested the interview transcript under notice in terms of rule 35(14) of the uniform rules of court, for the purposes of pleading and it is annexed herewith marked as annexure "A".
3. The statements made by the Defendant during the interview are not defamatory.
4. There are no statements made by the Defendant during the television interview which refers to or related to the Plaintiffs directly and personally.”

- [4] The Defendant's complaint as stated in the notice of exception is that the statements made by the Defendant during the interview, as contained in the transcript of the interview, are not defamatory in that they do not refer or relate to the Plaintiffs directly and personally. In oral argument it was submitted on behalf of the Defendant that the statements refer or relate to the Red Ants which is a juristic person.
- [5] A further ground of exception was raised during argument in court being that the material or document upon which the Plaintiffs rely for their course of action is not attached to the particulars of claim thus rendering the particulars of claim excipiable.
- [6] An exception is a legal objection to the opponent's pleading. It complains of a defect inherent in the pleading: admitting for the moment that all the allegations in a summons or plea are true, it asserts that even with such admission the pleading does not disclose either a cause of action or a defence, as the case may be. It follows that where an exception is taken, the court must look at the pleading excepted to as it stands together with facts agreed to by the parties, if any, no facts outside those stated in the pleading can be brought into issue – except in case of inconsistency – and no reference may be made to any other document.
- [7] The Defendant's submission that where the cause of action is premised on a document or material, that document or material must be attached to the particulars of claim, is correct. [1] However, this is not the situation in the current matter. The Defendant's submission in this regard is not supported by the contents of the particulars of claim. The particulars of claim are clear. The Plaintiffs do not rely on any documentation or material except the words that were broadcasted during the interview. The Plaintiffs' allegation is that the words were broadcasted. Nowhere in the particulars of claim is refence made to a document or material where the statements are contained.
- [8] The transcribed interview does not take the Defendant's case any further. It is trite that where an exception is taken, the court must look at the pleading excepted to as it stands together with facts agreed to by the parties, if any, no facts outside those stated in the pleading can be brought into issue and no reference may be made to any other document.
- [9] The argument that the statements made by the Defendant during the interview, as stated on the transcript of the interview, are not defamatory in that the statements do not refer or relate to the Plaintiffs directly and personally, is, also, not sustainable. It has been held that an exception ought to be dealt with sensibly and not in an over technical manner particularly where the issues are invariably fact bound and can be cured by evidence at the trial.[2]
- [10] Whether the statements are defamatory or not, or do not refer or relate to the Plaintiffs, is a matter of evidence which will resolve the issues at trial. It is not for this court, at exception stage, to determine such issues.
- [11] It is on this basis that the exception ought to fail.

[12] The exception is dismissed with costs on B scale.

E M KUBUSHI J

Judge of the High Court

Gauteng Division

Appearances:

For the Plaintiff : Adv W F Wannenburg Mobile: 082 823 2679 For the Respondent : Adv J
Hlongwane Mobile: 066 455 8411 Date of argument: 14 November 2024 31
January 2025

[1] See Volkskas Bank Ltd v Wilkinson 1992 (2) SA 388 at 389A.

[2] See Telematrix (Pty) Ltd t/a Matrix Vehicle Tracking v Advertising Standards Authority SA
2006

(1) SA 461 (SCA) at para 3.

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Prepared on 9 October 2026 · Esheria