

SOUTH AFRICA / JUDGMENT

Beckett and Another v Buthelezi (195/88) [1990] ZASCA 13 (15 March 1990)

[1990] ZASCA 13

COURT

Supreme Court of Appeal

BEFORE

Corbett, Van Heerden, E M Grosskopf, Friedman,
Goldstone

CASE / FILE NUMBER

195/88

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IN THE SUPREME COURT OF SOUTH AFRICA (APPELLATE DIVISION)

In the matter of:

DENIS BECKETT First Appellant SAGA PRESS (PROPRIETARY) LIMITED . Second Appellant

and

MANGOSUTHU GATSHA BUTHELEZI . . . Respondent

CORAM: Corbett CJ, Van Heerden, et E M Grosskopf JJA, Friedman et Goldstone AJJA.

DATE OF HEARING: 15 February 1990

DATE OF JUDGMENT: 15 March 1990

JUDGMENT CORBETT CJ: The second appellant is the proprietor and publisher of a news magazine named "Frontline" and first appellant is its editor. Frontline is printed and published in Johannesburg and is distributed throughout the Republic of South Africa. In the November 1986 issue of Frontline there was published, under the caption "Foreign Perceptions", an article entitled "Swigging gins and searching souls". It appears from a note under the title that the article originally appeared in the British journal, The Spectator, and that its author is a writer named Stephen Robinson. From the article it would seem that the author had, at the time of writing, recently returned to Britain from a visit to South Africa; and the article records the writer's views upon certain aspects of the political situation in this country. In it Mr Robinson is critical of the superficiality of some of the judgments passed on South Africa by foreign correspondents and he proceeds to correct what he perceives to be some of the inaccurate impressions current about South Africa overseas. He states, inter alia, that this superficiality is "apparent in

the portrayal of black nationalist leaders". He then singles out three such leaders, Mrs Winnie Mandela, Archbishop Desmond Tutu and the respondent in this appeal, Chief Minister Mangosuthu Buthelezi. About each of them he makes disparaging remarks. The paragraph devoted to the respondent reads as follows:

"By contrast, Chief Buthelezi is commonly portrayed as the rogue stooge of Southern Africa, dismissed by Denis Healey after his flying visit as a puppet of Pretoria. The Zulu leader is not everyone's cup of tea, he is nauseatingly pompous and self-important. His claim to represent the sole non-violent alternative to Marxist revolution is questionable to say the least, and his well-drilled impi regiments are among the most thuggish operators in South Africa. In a perfect world, or if Africa were like Europe, he would not exist. But the plain fact is that many Zulus - well over a million of them in fact - go for that sort of thing. He simply cannot be ignored, and ANC and

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United Democratic Front leaders admit as much privately. Only someone who has never lived in Natal would dismiss him as irrelevant."

The respondent is the Chief Minister of the Government of KwaZulu, a self-governing territory established under the National States Constitution Act 21 of 1971; and he is also the Chairman of the Black Alliance and the President of Inkatha, the latter being a Black political and cultural organization drawing its support mainly from the Zulu nation. Citing the above-quoted extract from the Frontline article, respondent instituted an action for damages for defamation against the appellants in the Durban and Coast Local Division. The case was heard by Howard J (as he then was) and he gave judgment for the respondent in the sum of R12 000, interest thereon from date of judgment to date of payment and costs. He also granted leave to appeal to this Court. Condonation for the late filing of the record of appeal and provision of security was granted at the5

inception of the hearing of the appeal, appellants to pay the costs of the application.

At the appeal stage the issues had become crystallized and to some extent narrowed., For respondent it was agreed that the defamation lay mainly in the sentence

"His claim to represent the sole non-violent alternative to Marxist revolution is questionable to say the least, and his well-drilled impi regiments are among the most thuggish operators in South Africa."

For appellants it was conceded that these words were defamatory. Three defences were raised: (i) truth and justification, (ii) fair comment and (iii) want of unlawfulness on the ground that publication of the defamation was justified by public policy (cf *Zillie v Johnson and Another* 1984 (2) SA 186 (W)).

Although it was common cause that the article was

6 defamatory of the respondent, the parties were not ad idem as to precisely what that defamation was. In his particulars of claim (paras 12 and

- 13) the respondent pleaded that the contents of the article were intended to mean and understood by those members of the public who read it to mean, or alternatively carried innuendoes to such effect, viz. -
- (1) that the plaintiff (now respondent) is a purveyor of violence in South Africa;
- (2) that the plaintiff has trained military regiments to commit illegal acts of violence in South Africa;
- (3) that the plaintiff is responsible for regiments of ruffians who commit illegal acts of violence in South Africa; and
- (4) that the plaintiff's conduct falls short of Western and/or civilized standards.

7 The first three of these meanings, or innuendoes, were evidently based upon the vital sentence quoted above; the fourth meaning upon the portion of the paragraph following that sentence.

Appellants' plea contains a blanket denial of paras 12 and 13 of respondent's particulars of claim, but in argument before us appellants' counsel conceded that what I have called "the vital sentence" carried meanings (1) and (3) above, and also meaning (2) by way of innuendo. Meaning (4), however, was disputed.

In oral argument on appeal respondent's counsel appeared to put upon the vital sentence a somewhat different gloss. He referred to the word "and" in the sentence and submitted that it meant "witness the fact that" or "as proved by the fact that". He further argued (1) that the first part of the sentence -

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"His claim to represent the sole non-violent alternative to Marxist revolution is questionable "

read in the light of the article as a whole, had reference to the struggle of the Black man in South Africa to change the existing political and social order (what I shall call

for the sake of brevity "the Black struggle"); (2) that accordingly the second part of the sentence -

"... and his well-drilled impi regiments are among the most thuggish operators in South Africa",

bearing in mind the meaning attributed to the word "and", meant that respondent's well-drilled impi regiments were conducting thuggish operations in implementation or support of the Black struggle, thereby contradicting respondent's claim to represent a non-violent alternative to Marxist revolution; and (3) that there was no possible basis upon which this allegation could be justified. Appellants' counsel contested this interpretation, but conceded that, if it were correct, it had not been justified. The test for interpreting words alleged to be defamatory is to ask how

they would be understood by the ordinary, reasonable reader of the publication in question. This hypothetical reader should be endowed with average intelligence and education (Basner v Trigger 1945 AD 22, at 35) and, I suggest, with a normal or average general knowledge and experience (see Sutter v Brown 1926 AD 155, at 167; cf Lewis and Another v Daily Telegraph Ltd; Lewis and Another v Associated Newspapers Ltd 1963 (2) All ER 151 (HL), at 154; Gatley on Libel and Slander, 8th ed., par 98).

Applying this test, I am not persuaded that the meaning which respondent's counsel sought to place on the vital sentence is the correct one. The evidence indicates, and I think that as at November 1986 the ordinary reasonable reader of Frontline, particularly one living in Natal, would have known, that for some years prior thereto there had been many violent and politically-inspired clashes in Natal between members of Inkatha, of which respondent was the leader, and members of other rival organizations, notably the United Democratic Front ("UDF"). In evidence respondent likened such clashes, to some extent, to the political violence taking place in the Lebanon and Northern Ireland. (Again for the sake of brevity I shall call this "Black against Black" violence. In doing so I am not unmindful of the fact that the UDF is not an exclusively Black organization.) It was not suggested in evidence that violence in which members of Inkatha may have been involved was at any time directed in support of the Black struggle; nor do I think that the ordinary informed reader of Frontline would have any grounds for so thinking. In the circumstances I am satisfied that the ordinary informed reader would have understood the second part of the vital

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sentence to refer to the Black against Black violence which had plagued Natal for so long.

Admittedly the word "and", in the context of the vital sentence, would seem to indicate some connection between the two parts of the sentence. If, as respondent's counsel has suggested, it means "witness the fact that" or "as proved by the fact that", then it betrays an illogicality of thought on the part of the writer, for the Black struggle and the wave of Black against Black violence are unconnected phenomena, the one being aimed at White dominance in the country as a whole and the other being a power struggle for predominance between Black groupings in Natal. Be that as it may, it seems to me that in substance the sentence comprises two averments, both of which are defamatory and both of which had to be substantiated for the defence of justification and/or fair comment to succeed.

I turn now to consider the evidence on the issues

12 of justification and fair comment. The only witness called in support of the claim was the respondent himself. For the defence three witnesses were called - Mr P L Mann, Mr R S Smith and Mr R Radebe. Broadly speaking, appellants' case on the issues of justification and fair comment rested on proof

(1) that over the years there had been in Natal much Black against Black violence; (2) that groups of Inkatha members had participated in such violence; and (3) that respondent had made a number of public utterances in which he, as leader of Inkatha, had threatened rival political groups with violence.

(1) above is common cause. In support of (2) evidence was given of certain episodes in which, it was alleged, the Inkatha groups involved had been the aggressors and had behaved in a thuggish fashion. I deal in more detail with these episodes later. And in support of (3) above extracts from various speeches and other public¹³ statements, admittedly made by the respondent, were put to the respondent in cross-examination.

With regard to these speeches it was submitted by respondent's counsel that each extract should be read in the context of the relevant speech as a whole; and I did not understand appellants' counsel to dispute this. Indeed the proposition seems to me to be indisputable. Some of the speeches are to be found in a batch of documents annexed to the minute relating to the pre-trial conference held in terms of Rule of Court 37, but the majority are contained in a bundle of documents handed in by respondent's counsel at the commencement of the trial. In his opening address respondent's counsel stated that the parties were agreed that the documents "would be what they purported to be" and that some of them would be referred to in the course of the evidence. From this I infer that by consent the documents, or at any rate those used at the trial, were properly before the Court and became part of the trial record.

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I have read in their entirety all the speeches and other public utterances (about 18 in number) referred to in the cross-examination of respondent, together with the evidence given by the respondent in regard thereto, and I have come to the following conclusions. The respondent is unquestionably given to the use in his speeches of colourful imagery and of strongly emotive language. His utterances are at times aggressive, even bellicose. Some of the sentiments expressed by him are such as would not be . approved by many peace-loving persons; and certainly the retaliatory action advocated by him on certain occasions (I shall later refer to this in more detail) would often be likely to exceed the lawful bounds of self-defence. But these utterances must, as I have said, be seen in their context and also against the background of the general circumstances prevailing in the territory of KwaZulu and in the rest of Natal at the time, viz endemic internecine¹⁵ feuding between Black and Black, Inkatha and the UDF, Inkatha and other Black political organizations.

The importance of viewing statements in their context is, in my view, well illustrated by a speech made by the respondent to the Royal Commonwealth Society on 24 April 1987, in which he said:

"(i) As a Black leader in South Africa, who has spent his whole life in politics, I am deeply aware of the potential for violence which exists. I could in fact go on a violent rampage which could leave previous violent episodes as pale reflections of what violence can be in South Africa. I lead a VERY ANGRY people. I am myself disgusted with the intransigence of the South African Government. It is this very potential for violence which fires our determination now to get the negotiation process under way

(ii) White South Africans will adopt scorched-earth policies to meet revolutionary scorched-earth policies before they

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capitulate." (My numbering.)

On the basis of these statements it was suggested to the respondent in cross-examination that his professed commitment to non-violence was qualified in many respects, ie by the menace of violence which he directed both at the Government and at his political enemies. In my opinion, a reading of the speech as a whole totally refutes this suggestion. The themes of the speech are the pressing need for all ethnic groups in South Africa to come to the negotiating table in order to work out a new political and social dispensation for the country, and the unacceptability of violence as an alternative solution. The first of the above-quoted passages itself reflects the respondent's urgent advocacy of the "negotiation process"; and the reference to "the potential for violence" is made in order to underscore such urgency and the danger of alleged intransigence on the part of the South African Government.¹⁷ The second passage, which appears in the same paragraph as the first, is made with reference to a formula for settlement reflecting an assertion by the African National Congress ("ANC") that the only thing to be negotiated is the handing over of power to it (the ANC). Later in the speech respondent states -

"If violence wins the day, any future government will have to attempt to rule not only over a deeply polarised South Africa, in which there will be no consensus amongst the country's population groups about how South Africans want to be governed, but will also have to attempt to do so with a destroyed economy which will leave it incapable of making liberation meaningful to ordinary people in terms of improved standards of living. A people who struggle because they starve, and struggle because they are oppressed, and who struggle to escape this fate by changing the government of the country, will do so yet again if they continue to be starved and continue to be

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oppressed. If violence wins the day, there will be no Rule of Law and there will be no multi-party democracy, because there will be a South Africa laid waste by it."

The speech is, in my view, clear evidence of a commitment on respondent's part to a peaceful alternative solution to the problems of South Africa.

The background circumstance of continual internecine feuding between Black and Black is a recurrent theme in the speeches of respondent referred to in evidence and it appears to have sparked off much of the more emotive and bellicose language used by him. A reading of the speeches in question reveals a conviction on respondent's part that this internecine feuding was initiated by the UDF and other organizations opposed to Inkatha as part of a campaign of political intimidation; and a determination upon respondent's part that he and his organization and its members should not be so intimidated or thereby deflected¹⁹ from their chosen role in the politics of the country. Whether this conviction as to the culpability of the UDF and others was well-founded is not the point. In this connection the case is concerned with respondent's views and attitudes. Nor is his bona fides or the genuineness of these statements in issue; indeed appellants' case was that respondent's attitudes and beliefs were to be gleaned from his public utterances.

Accordingly, many of the speeches referred to in evidence contain complaints about the aggressive behaviour of the opponents of Inkatha and the need for Inkatha members to defend themselves. Thus in a presidential address to the so-called "Women's Brigade", a branch of Inkatha, on 19 October 1985 respondent stated -

"Just look at the tactics and strategies which are employed against us in the violent onslaughts that are made. A car drives up to a bus rank; a man leaps out, shoots somebody

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dead and shouts to the crowd, every member of Inkatha will be killed. He leaps back into his car and disappears before the stunned crowd can do anything and before the police arrive. Look at the hideousness of what our enemies do when they lurk in wait for Mrs Mxenge, slay her brutally, and then instigate rumours that it is Inkatha which has done this foul deed. Look at what they do; gangs of thugs are imported from the Transvaal, the Eastern Cape and other places. They throw a petrol bomb, they hack a person to death, they set fire to a shop and incite people to loot it, and when they get a group of excited people together, they drum up mob behaviour with emotional appeals and leave them to be confronted with the brutality of the police. And then when Inkatha members stand up in those circumstances to defend their lives and their property, the rumours are started that Inkatha is working with the police against the people. And when they have done these things and more, those who are obedient lackeys working on newspapers, start the rumours that Inkatha is losing support and that the people are revolting

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against it. These are the tactics which are used against us. Kombi-loads of strangers come into our townships and incite our children to stay away from schools, to burn schools and to reject their mothers and fathers. These are the tactics we have to contend with. We are unarmed and these political thuga come with bombs to plant in the cloakroom next to the disco where our children are dancing. We can thank God that there was no loss of life. These are the tactics that we face. Are we to stand by and moralize about the evils of what they are doing? Or are we to defend ourselves?"

The answer to these questions is given in subsequent paragraphs, some of which were cited in cross-examination. It appears to be that the persons responsible for all this violence must be spoken to sternly and if they do not listen then they must be -

"... hounded out by the people whom they are sent to destroy. We do not go to bed with jackals, hyenas and serpents".

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These and other passages from respondent's speeches were quoted by appellants as amounting to incitements to violence and, therefore, as establishing, or tending to establish, the truth of the allegations contained in what I have termed the vital sentence. In particular, reference was made to speeches in which the respondent expounded his retaliatory philosophy of "an eye for an eye and a tooth for a tooth". Typical examples of this are an address at a summer camp on 29 December 1985 and a presidential speech to the central committee of Inkatha on 11 January 1986. In both speeches the reference to "an eye for an eye" etc is preceded by a diatribe against internecine Black feuding and violence directed at Inkatha, for which the UDF and the ANC are said to be responsible. In the former speech the respondent said:

"We will not be intimidated and ours now is

the motto: An eye for an eye and a tooth

for a tooth. If a man sticks out his hand to

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shake my hand, I will shake his hand. If a man swears at me, I will swear at him. If a man hits me with his fist, I will hit him with my fist. If he uses a knife on me, I will use a knife on him. History demands no less of me than this. We dare not be weak. We dare not be intimidated. We dare not fail the people, and we will continue to take our right place in the forefront of the struggle."

In evidence respondent agreed that this statement fairly represented his philosophy. While the philosophy is consistent with the Mosaic law, as expounded in Exodus 21.22-5, Leviticus 24.17-21 and Deuteronomy 19.21, respondent had to concede in cross-examination (correctly -see The Gospel according to S. Matthew 5.38-41) that it did not accord with the teachings of Jesus Christ. I must confess, however, that the relevance of this cross-examination escapes me. When further questioned about this

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philosophy the respondent justified it on the basis that "my

people have a right to defend themselves". The Judge a quo rightly observed in this connection -

"He (referring to respondent) says that what he means by an eye for an eye and a tooth for a tooth is the right to defend oneself by meeting violence with commensurate violence. He calls it self-defence but the evidence shows that what he has in mind is proportional retaliatory violence rather than the use of force within the bounds of self-defence recognized in criminal law."

It would appear from respondent's further statements in evidence that such retaliatory action was regarded by him as defensive as it would demonstrate to the aggressors that they could not attack Inkatha with impunity and would thus deter future violence. One is reminded of the motto of the Kings of Scotland: *nemo me impune lacessit*.

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In assessing respondent's speeches some allowance

must be made for the kind of audiences to which they are addressed. He resorts on occasion to hyperbole and also to homespun metaphor. For example at a Kwamashu prayer rally held on 18 May 1980 the respondent said:

"It is nothing short of political suicide to attempt to get the people of South Africa to achieve the impossible. It is nothing short of political sabotage, of treachery and treason to present the people with alternatives which are not viable and cannot succeed. We will not tolerate such false prophets in our midst. The people might even crack their heads if they are not careful. I shudder at this thought. If the scrawny cockerels which crow on dunghills will not scatter when we stamp our feet we will grab their scrawny necks with our rough hands and squeeze them a little bit and make them gasp. And then we will see what will happen. Someone said that the best form of defence is to be first to attack."

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The respondent stated in evidence that this should not be

taken literally and should be read in the context of the speech as a whole, in which the policy of non-violence is strongly advocated. Some speeches contain military overtones and are full of the imagery of battle, as for example an address to the Inkatha Youth Brigade on 31 August 1984; but, as respondent himself pointed out, the Zulu nation is "a people steeped in the military tradition" and its members "have warrior blood coursing through (their) veins". Military allusions and metaphors would thus appeal to and be understood by such audiences and should not be taken too literally.

In the course of his evidence under cross-examination the respondent averred that he had many times called upon his supporters to refrain from acts of violence and that he had attempted to have talks with representatives of the UDF in order to bring an end to the feuding. He²⁷ gave particulars of such attempts. This was not

contradicted in evidence and there is no reason to doubt its correctness. He also denied that he had impi or regiments

(let alone well-trained ones) that committed acts of violence.

I come now to the evidence of aggressive violence imputed to Inkatha. The witness Mann, a journalist by profession, deposed to an episode in July 1979 when he went to Ulundi to see the respondent by appointment. The respondent was outraged because the Sunday Tribune, for which Mann then worked, had published a report written by Mann about a farmer in Natal who had named his dog "Gatsha" (respondent's middle name) and had dressed it up with an Inkatha tie and beret. Mann went to Ulundi on a "peace mission", ie in order to try to - as he put it - "normalise" the relationship between himself and his newspaper and the respondent. While waiting for the interview Mann was

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manhandled and his clothing torn by persons (presumably

members of Inkatha) outside respondent's office. When Mann was ushered in to meet the respondent the latter did not apologise for what had happened, nor did he appear unduly concerned. As the learned trial Judge remarked, this was a "deplorable incident", but I have difficulty in seeing what it has to do with the case. Moreover, I might add in passing that, bearing in mind how insulting it evidently is, according to Zulu tradition, to call somebody a dog, it seems to me that the writing and publication of the article in question was very foolish, insensitive and indeed provocative.

The witness Smith was a political reporter on the Natal Daily News in 1985. He deposed to three episodes which he had witnessed in the course of carrying out his journalistic duties. The first related to the funeral of an unrest victim (evidently a member of the UDF), which took

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place at the Umlazi cemetery in August 1985. Smith and a fellow journalist and photographer, one Paddock, went to "cover" the funeral. While he was with the family mourners at the graveside a group of about 150 UDF supporters arrived and sang and chanted and waved placards. They later moved off. Thereafter a group of about 100 men armed with sticks, spears and shields arrived at the entrance to the cemetery. With them was Prince Gideon Zulu, a senior member of Inkatha. Prince Gideon told Smith that they had heard that there were people at the cemetery who might make trouble and that they had come to make sure that no shops, stores or homes were attacked after the funeral. After the funeral Smith saw a large group of men massing on the road leading to the entrance to the cemetery. Several buses were drawn up behind them and men were still embarking from the buses. The group was shouting and chanting. A car drove up and a Mr Sabelo, a senior member of Inkatha, alighted and joined the group. Members of the group shouted and brandished³⁰ their weapons at mourners leaving the cemetery and

questioned and manhandled some of them. Later Smith saw

some of the group chasing two men down the hill and over

some fields. Heading home they encountered on the road twomen who had been injured and took them to hospital.

The second episode occurred at KwaMashu in September 1985. Having heard that there was trouble there, Smith and others went to investigate. In the centre of the township Smith found a large group of school pupils facing a Caspir armoured vehicle, which was blocking the road. A van then drove up, stopped next to the Caspir and a group of men armed with sticks, spears and shields jumped out. They charged the pupils, caught some of them and beat them. The pupils counter-attacked, hurling stones and bricks. Thereupon the armed group jumped back into their vehicle and drove away. Later a microbus and a small bus arrived and discharged a larger group of armed men, who again charged³¹ and chased the school pupils. Smith witnessed a pupil being dragged from a house and assaulted. At the school itself there was a group of about 30 armed men at the entrance gate. A verbal altercation took place at the gate between a Mr Thomas Shabalala, a member of Inkatha, and the headmaster, who appeared terrified. Teachers intervened and asked Shabalala to leave, which he eventually did.

The third episode concerned a King Shaka Day commemoration rally which took place in a stadium at Umlazi in September 1985. It was addressed by the respondent and was attended by several thousand Inkatha supporters. Amongst the audience were a number of VIP guests, politicians and members of the diplomatic corps. While respondent was delivering his address a number of armed Inkatha supporters left the stadium in three buses and proceeded to Lamontville. There they attacked a house; the residents counter-attacked; and then security forces³² arrived and drove the Inkatha and counter-attacking groups

apart. Prince Gideon Zulu and Thomas Shabalala were seen

in the Inkatha group. Members of this group were very angry and seemed intent on returning to attack the residents, but

the police prevented this. While the police were talking to the Inkatha people a van came down the road and, finding

itself blocked off, veered round to proceed up a side road. As it did so some Inkatha members beat the sides of the van with their sticks. Shortly thereafter the Inkatha members marched back to their buses and returned to the stadium.

Not long after Smith had himself returned to the stadium he

saw Prince Gideon Zulu at respondent's side talking to him

and looking in his (Smith's) direction. Smith grew

concerned and decided to leave.

The third defence witness, Mr Reginald Radebe, deposed to what had happened at a graduation ceremony at the University of Zululand in May 1980. He was at the time

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president of the SRC at the University. Prior to the

ceremony there had been reports of an intended demonstration at the ceremony against respondent, who occupied the position of Chancellor of the University, and of a plan by respondent's supporters to come to the University to defend him. The students decided that respondent be requested to ask his supporters not to come to the ceremony armed or dressed in Inkatha uniforms. A telegram to this effect was sent to the respondent by the students. On the day armed Inkatha supporters in uniform did come onto the campus of the University; confrontations with students occurred; and, according to Radebe, students and others were assaulted by members of Inkatha. The graduation ceremony took place. After the ceremony Radebe was cornered by armed Inkatha supporters and beaten up.

The episodes deposed to by Smith were canvassed in the cross-examination of the respondent, but it was not

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suggested that he had knowledge thereof. He was also cross-examined about the graduation ceremony referred to by Radebe, but was unable to recall it clearly and had no knowledge of the assault upon Radebe. In re-examination, it transpired that the incident was investigated by a commission under the chairmanship of Prof Middleton of the University of South Africa; and that prior to this the respondent had condemned the violence in strong terms.

The question now is whether this evidence was sufficient to discharge the onus of showing that the defamatory words were true. If they were, then there is not much doubt that the publication thereof was in the public interest.

As to the first part of the vital sentence, there is, in my view, no justification in the evidence for the allegation that respondent's claim to represent a non-violent alternative to Marxist revolution is questionable.³⁵ On the contrary respondent's evidence shows that he was at the relevant time a firm adherent of the policy of solving the country's problems by negotiation; and there is abundant support for this in the speeches of respondent canvassed at the trial. In argument appellants' counsel appeared to contend that if the second part of the vital sentence were shown to be true this would serve as justification for the first part. I am unable to see this, but in any event, for the reasons which follow, I am of the view that the appellants failed to establish the truth of the second part of the sentence.

In my opinion, this part of the vital sentence means, and would be understood by the reader to mean, that respondent has under his command or control well-drilled impi regiments and that they are mandated by him to carry out acts of criminal violence in such a way as to make them "among the most thuggish operators in South Africa". The

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word "thug" is of Indian origin and in that country related to an association of professional robbers who strangled their victims. In a transferred use the word "thug" means "a cut-throat, ruffian, rough" (The Oxford English Dictionary).

The four, apparently unconnected, incidents deposed to by Smith and Radebe involving groups of armed Inkatha supporters did undoubtedly include acts of violence, some of which might be termed "thuggish". But I agree with the finding of the Court a quo that -

"...there is nothing to gainsay or cast doubt on the plaintiff's evidence that he had nothing to do with these incidents and was in no way responsible for the conduct of those who were involved".

As the learned Judge points out, Inkatha has a membership of about 1,5 million, apart from supporters, and its leader can hardly be held responsible for everything done in its name³⁷ or in its interests. Moreover, these incidents must be seen against the background of Black against Black feuding which had been going on for years. And obviously it would be fallacious to pass judgment on the four incidents and to draw general conclusions therefrom without having fuller information than Smith and Radebe gave, or were able to give, as to the background to these incidents and their causes.

The learned trial Judge also accepted respondent's denial that either he or Inkatha had impi or regiments. I agree with this finding and also with the Judge's observation that this posed an insuperable obstacle to proving the truth of the second part of the vital sentence. And I might add that the somewhat motley groups of persons depicted in the photographs taken at the Umlazi funeral and in the course of the second episode at KwaMashu appear to me hardly to conform to the description of "well-drilled impi

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regiments".

It was argued by appellants' counsel that in expounding his philosophy of an eye for an eye, respondent had espoused violence in a volatile situation and that he must accordingly be held responsible for the thuggish behaviour described in the evidence. There is no evidence that the alleged thuggish behaviour was in any way influenced or inspired by respondent's philosophical dissertations. But in any event it seems to me that this argument fails to meet the real gravamen of the defamation, which is that respondent commands or controls well-drilled impi regiments which are mandated by him to carry out acts of criminal violence deserving of the description "thuggish operations".

Appellants' counsel also placed considerable emphasis on the principle of law that a defendant in a defamation suit, relying on justification, need only justify

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the main charge or gist of the defamation - he need not justify immaterial details or mere expressions of abuse which do not add to its sting and would produce no different effect on the mind of the reader than that produced by the substantial part justified (see *Johnson v Rand Daily Mails* 1928 AD 190, at 206). I fail to see any application for that principle in the present case.

Next I would refer to the defamation alleged to reside in the words following the vital sentence. Of this Howard J said:

"The plaintiff also, takes exception to the two sentences following upon the one which is underlined. According to Mr Gordon they carry the imputation that the plaintiff does not measure up to civilised standards as accepted in Europe. Mr Cameron's submission is that it is either inoffensive or trite to say of the plaintiff that "in a perfect world, or if Africa were like Europe, he would not exist". That may be so, but the

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sting lies in the explanation for his "existence": the fact that more than a million Zulus go for "that sort of thing", an obvious reference to the thuggery attributed to his well-drilled regiments. Although this does not take the matter much further I think that the defamatory imputation is clear."

I agree.

In my opinion, therefore, the trial Judge rightly dismissed the defence of justification on the ground that appellants had failed to prove the truth of the factual averments contained in the defamatory statements. Such failure also destroys the defence of fair comment.

In *Zillie v Johnson and Another* 1984 (2) SA 186 (W) it was held that once words are shown to be defamatory of the plaintiff there is a presumption of unlawfulness, thus casting a burden on the defendant to prove the lawfulness of the publication; that well-known defences⁴¹ such as privilege, fair comment and justification are merely instances of lawful publication and do not constitute a *numerus clausus*; and that the general principle is whether public policy justifies the publication and requires that it be found to be a lawful one (see p 195 B-C). The learned Judge (Coetzee J) added (at 195 D):

"The extent of the defence involves in each case the resolution of two conflicting interests; the interest of the individual in his own good reputation and the interest of society in hearing of a matter of public concern."

While conceding that the facts in *Zillie's* case were very different from those in the present case, appellants' counsel nevertheless sought to invoke the above-stated principles and asked the Court to hold that in accordance therewith the publication in this instance was lawful. I do not propose to examine in detail the arguments adduced in

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support of the proposition that it was in the public interest that Frontline should publish these false and defamatory statements concerning the respondent. In my view, there is no substance whatever in them. Were we to hold otherwise I fail to see how any public figure could be protected from vilification by the law of defamation. Consequently, assuming the correctness of all the principles stated in Zillie's case, I am of the view that their application does not assist the appellants in this case.

Finally, it was argued on behalf of the appellants that the quantum of damages awarded was excessive. The reluctance of the court of appeal to interfere with the damages awarded by a trial court for defamation is well known. Generally speaking, it will do so only where the trial court has misdirected itself (and thereby come to an incorrect assessment) or the damages awarded are manifestly excessive or inadequate, as the case may be. It has not

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been shown, in my view, that Howard J misdirected himself in any respect. He rightly emphasized, without overstating, the seriousness of the defamation and its likely impact upon respondent's reputation as a political leader; and he also took into account, correctly in my view, the aggravation brought about by appellants' conduct in vigorously (and without success) pursuing to the end their plea of justification. He also duly balanced this against the relatively limited extent of the publication (and here the fact that he may have overstated the distribution of this particular issue of Frontline by a few thousand copies is of minimal significance) and the absence of any evidence that the publication of the defamation had in fact adversely affected the respondent's reputation.

Appellants' counsel referred to certain other awards of damages where lesser amounts had been granted for what it was contended were more serious defamations. But⁴⁴ these cases were decided about 20 years ago and, as appellants' counsel conceded, any comparison must necessarily take into account the considerable erosion in the value of money which has taken place in the intervening years. I am not persuaded that a comparison with these other awards shows that the damages granted in this case were excessive.

The appeal is dismissed with costs, including the costs of two counsel.

M M CORBETT

VAN HEERDEN JA) E M GROSSKOPF JA) FRIEDMAN AJA) CONCUR GOLDSTONE AJA)

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