

SOUTH AFRICA / JUDGMENT

Itumele Bus Lines (Pty) Ltd t/a Interstate Bus Lines v Msabe (6450/2022) [2023] ZAFSHC 392 (12 October 2023) [2023] ZAFSHC 392

COURT

Free State High Court, Bloemfontein

BEFORE

Berry, AJ

CASE / FILE NUMBER

6450/2022

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THE

HIGH COURT OF SOUTH AFRICA

FREE

STATE PROVINCIAL DIVISION

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Of

Interest to other Judges: YES/NO

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to Magistrates: YES/NO

Case

Number: 6450/2022

In

the matter of:

ITUMELE
BUS LINES (PTY) LTD t/a INTERSTATE
BUS
LINES
Applicant
and
ZWELAKHE
JOSEPH MSABE
Respondent

CORAM: BERRY, AJ
HEARD

ON: 18 MAY 2023
DELIVERED

ON: 12
OCTOBER 2023

JUDGEMENT

BY: BERRY, AJ

JUDGMENT

INTRODUCTION

- [1] The Applicant seeks a final Order interdicting the Respondent to refrain from publishing defamatory statements on social media.
- [2] The Respondent represented himself.
- [3] The Respondent refers to himself as a “Public Transport Activist”.
- [4] The parties have a long history of conflict which does not form part of this Application, other than to say they are no strangers to each other.
- [5] The relief sought by the Applicant is far reaching in that it seeks to interdict the Respondent from posting, spreading, publishing, or making known to the public or any of its clients, in whatever form, any comment or information, on any social media platform, and/or newspaper aimed at defaming the Applicant or damaging its reputation.
- [6] The relief is then specified in more detail relating to alleged unlawful tariff increases, a bus collision on 10 November 2022, alleging that the tyres were worn out, and that the Department of Police, Roads and Transport gives the Applicant preferential treatment in that it does not apply the law to the Applicant in the same manner it does to taxis and other road users.
- [7] The Applicant seeks further relief ordering the Respondent to delete fifty-five publications made on social media during the period 17 May 2022 to 07 February 2023, which aim to convey the above messages.
- [8] The Applicant further seeks an Order directing the Respondent to post a formal apology in which he detracts all messages and publications made since May 2022 which can be construed as insinuating that the Applicant is guilty of the conduct as set out in Paragraph 6.

- [9] The Applicant filed an Application with its Replying Affidavit, to strike out certain matters from the Respondent's Answering Affidavit on the basis that it is vexatious and scandalous and that other averments are irrelevant.
- [10] The Application to strike out certain matter are unopposed.
- [11] I refer to the various publications and statements posted by the Respondent on social media as "statements".

THE APPLICANT'S CASE

- [12] The main thrust of the Applicant's case is that the statements made by the Respondent is defamatory in that it is not true.
- [13] Thus, the statements cannot be justified under one of the grounds to justify defamation.
- [14] Further, that false statements cannot be held to be in the public interest.
- [15] The normal grounds for justifying defamatory publication are that the statements are true and that it is in the public interest for it to be published.
- [16] The Applicant is a private company that renders transportation services to the public since 1975 and has on average 230 busses running daily.
- [17] The Applicant transports 46 000 passengers daily and employs 630 employees.
- [18] The Applicant has a contract with the Free State Department of Police, Roads and Transport, which provides a subsidy to make the costs for commuters more affordable.
- [19] Tariffs commuters must pay are determined by means of interaction between various role players, including a forum known as Passenger Focus, which represent the commuters and the public.
- [20] Any increase in tariffs must be approved by the MEC of the Free State Province, after interaction between the various role players.
- [21] The Respondent is not part of the Passenger Focus group.
- [22] The thrust of the statements made by the Respondent is that:
- a) The Applicant received illegal and unlawful tariff increases.
 - b) That the Applicant does not serve the needs of the poor.
 - c) That the Applicant is dishonest and involved in fraud and corruption.
 - d) That the Applicant is white capitalists and does not respect our Constitution.
 - e) That bus 651 was operated with worn tyres and that the Applicant was responsible for the collision on 10 November 2022.
 - f) That the Applicant murdered commuters.

- [23] The Applicant's case is that these statements are false and impacts negatively on its reputation and therefore its relationship with its customers.

THE RESPONDENT'S CASE

- [24] The Respondent's case is that he is advancing the Applicant's passengers' interest and that of Mangaung residents, whose rights are violated by the Applicant and the Free State Department of Police, Roads and Transport.
- [25] The Respondent further relies on his Constitutional Right to freedom of expression in terms of Sec 16 of our Constitution.
- [26] As the Respondent represented himself, I allowed him to go beyond his papers during argument.
- [27] The thrust of the Respondent's argument consisted of historical and background information, arguments about his intentions and a firm believe that he acts in the communities' interest, which he believes justifies the publication of the statements made.
- [28] Sec 16 excludes statements which constitutes incitement to cause harm[1].
- [29] The Respondent did not argue that the statements are true and relied on the context, the historical background, his campaign to serve the broader interest of the Applicant's commuters and the public at large.
- [30] The problem with context, motives, and history, as argued by the Respondent, is that these arguments of context, motives, and history does not appear in the publications.
- [31] Nor does context, motives, and history, as argued in Court, make the statements true.
- [32] The reader of these statements does not have the benefit of the publisher's context, motives, or the history to the post. The reader will interpret the statements as it is published.
- [33] The Respondent argues that granting a final interdict will infringe on the public's right to be informed about the Applicant's illegal and unlawful conduct.
- [34] The Respondent further relies on Sec 24 of our Constitution, alleging that the Applicant's conduct undermines its passenger's right to a safe environment.
- [35] The Respondent further relies on Sec 38 of our Constitution to aver that the Applicant does not have locus standi to bring this Application. This aspect was however not pursued during argument.

EVALUATION

- [36] The Respondent persisted to publish defamatory statements about the Applicant, even after this Application was served on him on 22 December 2022.

- [37] This illustrates that the Applicant had no other option than to apply for a final interdict, ordering the Respondent to refrain from publishing defamatory statements about the Applicant.
- [38] Publication of defamatory statements can be justified on the grounds that the statements are true and that they are in the public interest.
- [39] The right to freedom of speech does not give a party the right to publish false statements.
- [40] The party that made prima facie defamatory statements, bear the onus to prove that the statements are true and that it is in the public interest for it to be published.
- [41] The Respondent limited his argument to his right to freedom of speech, public interest, the context, and history of his campaign to serve the broader interest of the Applicant's commuters and the public at large.
- [42] The Respondent does not once aver that the statements he published are true.
- [43] The Applicant provided sufficient proof to show the bus involved in the accident was roadworthy and the tyre published by the Respondent, as allegedly being fitted to the bus involved in the accident, is not true.
- [44] The Respondent did not provide any argument or evidence to lend credence to the allegations of fraud and unlawful activity allegedly committed by the Applicant in collusion with the Free State Department of Police, Roads and Transport.
- [45] Believing that one pursues a worthy cause in the public's interest, does not justify publishing false statements about another party.
- [46] Defamation is the publication of false information that harms the reputation of a person, organisation, or a business.
- [47] Defamation violates a person or entities' dignity and reputation[2].
- [48] A juristic person is entitled to protect its reputation[3].
- [49] A publication is defamatory if it is calculated to, or have the tendency to undermine the status, good name, or reputation of another[4].
- [50] Publication of defamatory statements are prima facie wrongful.
- [51] Once it is established that a publication is defamatory, the onus shifts to the party who made the publication, to justify the publication on the basis that the statement is the truth and that it is in the public interest for it to be published[5].
- [52] The protracted history of conflict between the parties and the fact that the Respondent continued with the publication of defamatory statements, after this Application was served on him on 22 December 2022, shows that an Order that only directs the Respondent to remove the defamatory statements will not suffice.

[53] On 22 December 2022 (the day this Application was served on the Respondent) the Respondent posted[6]:

“It will take more than a court interdict application to get me SILINCED, (sic) trust me we will duplicate into thousands daily, cause indeed people of Mangaung are fed up with IBL services and it is a fact that its busses are delayed daily and inconvenience passengers.

2023 is the beginning of the END of MURDEROUS and CAPITALIST relations between DPRT & IBL.”

[54] The above post was followed by three further posts on 26 December 2022, which was followed further posts on 27 December 2022, 28 December 2022, 29 December 2022, and nine posts on 1 February 2023.

[55] All these posts are in a similar tone to the previous posts.

[56] The Respondent did not once raise the defence of truth to justify the statements.

[57] A Court should be slow to grant a final interdict against a party preventing him/her from publishing matter in future in view of the right to freedom of expression guaranteed in Sec 16 of our Constitution[7], unless the facts justify such an Order.

[58] The statements published by the Respondent are defamatory and the Respondent persists to publish these statements, thus the Applicant is entitled to the relief sought.

[59] A final interdict will not prevent the Respondent from publishing statements which are true and in the public interest.

[60] A final interdict will only serve to prevent the Respondent from making false statements about the Applicant in future.

APOLOGY

[61] The Applicant seeks an order directing the Respondent to publish an apology for the statements he published.

[62] Forcing a party to publish an apology against his will does not seem to serve any purpose, other than soothing the feelings of the injured party.

[63] Forcing a party to publish an apology creates a further opportunity to create awareness of the very statements the complaining party took umbrage to.

THE APPLICATION TO STRIKE OUT

[64] The Application to strike out is not opposed by the Respondent.

[65] The Applicant regards certain averments vexatious and scandalous, and other to be irrelevant.

- [66] For instance, the averment in the Answering Affidavit that an increase was approved in contravention of a contract, in support of the statements the Respondent published, does not necessarily make the averment vexatious.
- [67] The impugned averments in the Answering Affidavit are made in context of the Respondent's view that the Applicant acted in a manner that justified his statements on social media.
- [68] The Court is in any event able to interpret the pleadings for what they are.

ORDER

1. The Respondent is ordered to remove all social media posts, on whichever platform it is posted, as reflected in ANNEXURES D1 to D21, E1 to E27 and Y1 to Y14 within 7 days from the date this Order is served on the Respondent.
2. The Respondent is interdicted from posting, spreading, publishing, or making known to the public, or any of the Applicant's clients, aimed at defaming or damaging the Applicant's reputation in whatever form, any comment and/or information on any social media platform and/or newspaper, including, but not limited to:
 - 2.1 Facebook.
 - 2.2 WhatsApp.
 - 2.3 Telegram.
 - 2.4 Twitter.
 - 2.5 Instagram.
 - 2.6 Any newspaper or magazine, whether in electronic form or otherwise, or on the internet.
3. The Application to strike out certain matter from the Replying Affidavit is dismissed.
4. No costs Order is made for the Application to strike out.
5. The Respondent is ordered to pay the costs of the main Application.
6. The Applicant is ordered to serve this Order on the Respondent.

AP BERRY, AJ

APPEARANCES: For the Applicant: Adv. HJ Cilliers Instructed by: Symington & De Kok Attorneys
BLOEMFONTEIN For the Respondent: In person Per e-mail address z[...]@gmail.com

- [1] Sec 16(2)(c) of our Constitution.
- [2] National Media Ltd v Bogoshi 1998 (4) SA 1196 (SCA).
- [3] Media 24 Ltd and Others v SA Taxi Securitization (Pty) Ltd (Avusa Media Ltd and Others as Amicus Curiae) 2011 (5) SA 329 (SCA).

- [4] Le Roux v Dey 2011 (3) SA 274 (CC).
- [5] National Media Ltd v Bogoshi 1998 (4) SA 1196 (SCA).
- [6] Annexure Y1, page 19 of paginated bundle.
- [7] R.K.M v R.L.B 2015 (1) SA 270 (KZP).
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