SOUTH AFRICA / JUDGMENT

Lephoi v Ramakarane (4474/2020) [2023] ZAFSHC 222 (7 June 2023)

[2023] ZAFSHC 222

COURT
Free State High Court, Bloemfontein

BEFORE
Opperman

CASE / FILE NUMBER
4474/2020

Source: saflii.org · Research copy typeset by Esheria. Not court-issued or certified.

Source record

IN THE HIGH COURT
OF SOUTH AFRICA
FREE STATE
PROVINCIAL DIVISION
Case No.: 4474/2020
REPORTABLE: YES/NO
OF
INTEREST TO OTHER JUDGES: YES/NO
CIRCULATE
TO MAGISTRATES: YES/NO
In

the matter between:	SELLOANE LEPHOI Applicant/Defendant[1] and TSEPISO RAMAKARANE Respondent/Plaintiff[2]
Coram:	Opperman, J Date of hearing: 2 June 2023 Date of judgement: 7 June 2023

Delivered:	The judgment was handed down electronically by circulation to the parties' legal representatives by email and release to SAFLII on 7 June 2023. The date and time for hand-down is deemed to be 7 June 2023 at 15h00

JUDGMENT

[1] The application for leave to appeal that lies before Court relates to a matter that served on trial before Africa, AJ.[3] The action was for defamation allegedly suffered when the applicant made public defamatory statements against the respondent. Africa, AJ ordered a quo that:

[83] In the result, this court makes the following order in favour of Plaintiff, against the Defendant:

1. That the Plaintiff's claim for damages is granted and Plaintiff is awarded the amount of R350 000,00 (Three hundred and fifty thousand rand only);

2. Defendant is to make an unconditional public apology and it to be broadcasted on the airwaves of Sesotho Radio Station;

3. Defendant is liable for Plaintiff's costs of suit on the scale as between party and party.

[2] The crux of the application for leave to appeal is, inter alia, in the use of the word "corrupt" by the applicant after a finding of the High Court of this Division (Mathebula-judgment dated 12 June 2019). The applicant maintains she was referring to this judgment against the respondent when she defined and discussed the conduct of the respondent and she used the word in the dictionary meaning thereof. These are the undisputed facts as per the judgment a quo (The Africa-judgment):

[7] The Defendant inter alia referred to a judgment granted by the Honourable Court in a Review Application under case number 855/2019, a copy of which is attached hereto as annexure "PLE5".

[5] From the aforesaid Judgment the following is inter alia evident:

5.1 That plaintiff is the municipal manager of Setsoto Local Municipality;

5.2 Despite various deficiencies the plaintiff declared the third respondent in the application, Sibamwu Building Contractors (Pty) Ltd (Sibamwu) as the successful tenderer;

5.3 The court concluded that the conduct of the plaintiff was ostensibly not in tandem with the prescripts of the law;

5.4 The court held that the plaintiff's failure to comply with the clear provisions of the Supply Chain Management Act and Regulations demonstrates that the plaintiff's conduct was unlawful, which rendered the decisions irregular and invalid;

5.5 The plaintiff gave Sibamwu an opportunity to transform a non-responsive tender into a responsive one;

5.6 The court held that the conduct of the Plaintiff was arbitrary and was at best an irrational exercise of his mandate, culminating in a decision not supported by reports in his possession and a process outside the parameters of the law;

5.7 The Plaintiff acted in an unfair and unjust manner, outside the scope of his powers, so as to guarantee success in favour of Sibamwu;

5.8 The court granted a punitive cost order against the Plaintiff, in his personal capacity, due to his conduct.

[6] The Defendant accordingly denies that any of the statements made by her during the first and second discussions were scandalous, false and defamatory of the Plaintiff.

[3] Slotting in with the above, the grounds for leave to appeal against the Africa-judgment are now:

1. The Court erred by not finding that the publications made by the applicant on the Sesotho Radio Station regarding the respondent were essentially true and in public interest;
2. The Court erred by failing to duly consider the context within which the applicant made the publications regarding the respondent on the Sesotho Radio Station;
3. The Court erred by failing to duly consider the implications of the judgment granted on 12 June 2019 against the respondent in the matter between TML Civils (Pty) Ltd v Municipal Manager of Sesotho Local Municipality and others, case number 855/2019;
4. The Court erred by failing to duly take into consideration that corruption is defined in the Google's English Dictionary as "dishonest or fraudulent conduct by those in power, typically involving bribery";
5. The Court erred by failing to duly consider that the applicant gave a definition and explanation of what she considered as to be "corruption";
6. The Court erred in granting damages to the respondent in the amount of R350 000.00;
7. The Court erred by not granting costs on a Regional Court scale.
8. A quo the granting of judgment in favour of the respondent was erroneous. The claim should have been dismissed on the facts and the law.

[4] The atmosphere of this case reminds of the words of the Constitutional Court in Shinga v The State and another (Society of Advocates (Pietermaritzburg Bar) intervening as Amicus Curiae); S v O'Connell and others 2007 (2) SACR 28 (CC) that defined the judicial character of the task conferred upon a presiding officer in determining whether to grant leave to appeal. It should be approached on the footing of intellectual humility and integrity, neither over-zealously endorsing the ineluctable correctness of the decision that has been reached, nor over-anxiously referring decisions that are indubitably correct to an Appellate Court.

[5] The Supreme Court of Appeal in Ramakatsa and others v African National Congress and another [2021] JOL 49993 (SCA) in March 2021 ruled that:

[10] ... If a reasonable prospect of success is established, leave to appeal should be granted. Similarly, if there are some other compelling reasons why the appeal should be heard, leave to appeal should be granted. The test of reasonable prospects of success postulates a dispassionate decision based on the facts and the law that a court of appeal could reasonably arrive at a conclusion different to that of the trial court. In other words, the appellants in this matter need to convince this court on proper grounds that they have prospects of success on appeal. Those prospects of success must not be remote, but there must exist a reasonable chance of succeeding. A sound rational basis for the conclusion that there are prospects of success must be shown to exist.

[6] The peculiar facts of this case, as correctly surmised by the applicant in their heads of argument, direct that the statements of the applicant might have had some substance. She was guided by the Mathebula-judgment:

15.15 The Court held the following:

> *"The inescapable conclusion is that the integrity of the procurement policies were compromised to facilitate the success of the third*

applicant in being awarded the tender. The first respondent acted in an unfair and unjust manner, outside the scope of his

powers, so as to guarantee the success in favour of the third respondent." (paragraph 28);

15.16 The Court further held that the reasons for his conduct advanced by the respondent were largely an afterthought and not supported by the documents he relied on (paragraph 29);

15.17 The Court held that in the exercise of his duties as the accounting officer of the Municipality the respondent displayed, at the very least, gross negligence by ignoring and actively bending the said guidelines and regulations governing matters of that nature (paragraph 31);

15.18 The Court further held the following regarding the respondent:

> *"His behaviour was that of a person who utilised his power regardless of and in contempt of the very laws that empowered him to act. He did so without any bona fide reasons and unreasonably perpetrated his improper actions. His behaviour in covering his tracks by providing reasons that were found to be an afterthought points to a person whose commitment to fairness and clean governance is found wanting. This is contrary to the Constitution of the Republic and cannot be condoned by any stretch of imagination."*

(Paragraph 32);

15.19 The Court consequently ordered the respondent to pay the costs in his personal capacity (paragraphs 8 and 31).

[7] A reasonable prospect of success was established on the grounds and arguments submitted by the applicant and leave to appeal should be granted.

[8] ORDER

1. The applicant is granted leave to appeal to the Full Bench of the Free State High Court, Bloemfontein against the whole of the order and judgment granted on 21 April 2023.

2. Costs to be costs in the appeal.

M OPPERMAN, J

APPEARANCES

For the applicant ADVOCATE W GROENEWALD Chambers, Bloemfontein SYMINGTON DE KOK ATTORNEYS Bloemfontein For the respondent MR MJ PONOANE PONOANE ATTORNEYS Bloemfontein

[1] Selloane Lephoi will be referred to as the "applicant".

[2] Tsepiso Ramakarane will be referred to as the "respondent".

[3] Her term as acting judge lapsed and the matter is entertained in terms of section 17(2)(a) of the Superior Courts Act 10 of 2013 read with Rule 49(1)(e) of the Uniform Rules of Court in that leave to appeal may be granted by the judge or judges against whose decision an appeal is to be made or, if not readily available, by any other judge or judges of the same Court or Division.

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE	https://www.saflii.org/za/cases/ZAFSHC/2023/222.html
CASE PAGE	https://chat.esheria.ai/case-law/south-africa/lephoi-v-ramakarane-unknown-topic-afshc-2023

Prepared on 9 October 2026 · Esheria