

SOUTH AFRICA / JUDGMENT

M.M.S v H.K (2023/117058) [2025] ZAGPJHC 387 (17 April 2025)

[2025] ZAGPJHC 387**COURT**

South Gauteng High Court, Johannesburg

BEFORE

S D J Wilson

CASE / FILE NUMBER

2023/117058

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Source record**IN****THE HIGH COURT OF SOUTH AFRICA****(GAUTENG****LOCAL DIVISION, JOHANNESBURG)****(1)****REPORTABLE: NO****(2)****OF INTEREST TO OTHER JUDGES: NO****(3)****REVISED****DATE:**

17 April 2025

Case

No. 2023-117058

In the matter between:

MMS

Applicant

and

HK

First Respondent

VG

Second Respondent

JUDGMENT**WILSON J:**

1 On 7 February 2025, I refused to grant a final interdict the applicant, MMS, sought in restraint of what he claimed was the respondents' publication of defamatory material, their dissemination of injurious falsehoods and their pursuit of a pattern of harassment targeted at him. The respondents, HK and VG, had repeatedly alleged that MMS paid HK's daughter for sex and that MMS' money had been used to sustain her illicit drug habit in circumstances where she was in long-term treatment for a chronic and likely incurable form of cancer. The respondents said that they made their allegations public in order to induce MMS to break-off his relationship with HK's daughter.

2 I refused MMS relief because there were material and irresolvable disputes of the fact about whether the claims the respondents had made about MMS were true.

3 In this application for leave to appeal, Ms. Strathern, who appeared for MMS, conceded that I had correctly identified these factual disputes. Ms. Strathern nonetheless sought to persuade me that a court of appeal might reasonably reverse my judgment. As far as I could discern, that contention was advanced on two bases.

4 First, it was suggested that the fact of the publications themselves was not in dispute. A final interdict had to follow, Ms. Strathern submitted, because I found that the publications were *prima facie* defamatory, and because the respondents had not set up a defence to the claim that the publications were defamatory.

5 It is true that the publications MMS complained of were not in dispute. It is equally true that the publications were, on their face, defamatory. However, the truth of the content of the publications was hotly disputed. Ms. Strathern criticised the respondents for resisting a final interdict in restraint of defamation by asserting the truth of their publications without specifically referring to a defence of which the truth is a component. Without reference to such a defence, Ms. Strathern submitted, an interdict had to be granted.

6 I think that is plainly wrong. Pleadings and affidavits are about facts. It is perfectly permissible to plead the facts that would sustain a defence to a claim, including a claim of defamation, without also specifically labelling that defence in the pleading or affidavit itself. But even if that were not so, I cannot see on what basis I could determine MMS' entitlement to interdictory relief without being able to make final factual findings about whether what the respondents said about MMS was true. The disputes on the papers precluded me from doing so.

7 What is more, MMS must have known that the respondents were bound to dispute his contention that their allegations about him were false. In those circumstances, the proper course was to dismiss the application. That does not leave MMS without recourse. MMS is now free to seek relief by way of trial action, but there is no basis to suggest that a court of appeal would find itself able to determine his entitlement to final relief in circumstances where there are irresolvable and material disputes of fact on the papers.

8 Secondly, Ms. Strathern argued that even if all of the facts alleged by the respondents were accepted as true, a final interdict should still have been granted. It was not argued a quo that I should determine the case on that basis. Even if it were, I do not accept that a final interdict could have been sustained if I were to accept that the respondents' version that MMS had paid HK's daughter for sex; that MMS' money had been used to sustain her drug habit; and that HK's daughter was in long term treatment for a chronic and likely incurable form of cancer.

9 The claim for injurious falsehood could not have been sustained, because the respondents' claims would have to be accepted as true. The defamation claim would have to fail because it cannot have been wrongful for the respondents to publish true facts about a man who had paid HK's daughter for sex in a manner that funded her drug habit. The harassment claim would have to fail because it could not have been unreasonable for the respondents to publish these true facts in circumstances where their publication was intended to induce MMS to leave HK's daughter alone. I see no prospect of a court of appeal finding otherwise.

10 For all these reasons, the application for leave to appeal must fail.

11 The parties also addressed me on my finding that MMS had failed to disclose a text message sent to him on 28 November 2020 in his ex parte application for interim relief before Strijdom AJ. I deal with the message and its materiality in paragraphs 12 and 13 of my judgment a quo. Ms. Strathern accepted that the message was not disclosed, but argued that the failure to disclose it was immaterial to MMS'

entitlement to relief ex parte. It was submitted that the immateriality of the non-disclosure was a further basis on which my judgment could be challenged on appeal. The respondents supported my finding that the non-disclosure of the message was material, and that the ex parte order could not be sustained as a result.

12 I do not think it is necessary to consider whether there is any prospect that a court of appeal would differ with my conclusion on this point. The materiality or otherwise of the non-disclosure ultimately makes no difference to MMS' prospects on appeal. If the non-disclosure was material, but MMS had nevertheless made out a case for final relief on the undisputed facts, then I think it would have been at least arguable that I should have exercised my discretion in favour of overlooking the non-disclosure. If the non-disclosure was immaterial, that would have made no difference to the fact that MMS could not obtain final relief on disputed facts. Either way, the proposed appeal is overwhelmingly likely fail because of the material disputes of fact everyone accepts exist on the papers, rather than because of the strength of my conclusion on the materiality of MMS' non-disclosure.

13 For all these reasons, the application for leave to appeal is dismissed with costs. As in the court a quo, counsel's costs may be taxed on the "B" scale.

S D J WILSON

Judge of the High Court

This judgment is handed down electronically by circulation to the parties or their legal representatives by email, by uploading it to the electronic file of this matter on Caselines, and by publication of the judgment to the South African Legal Information Institute. The date for hand-down is deemed to be 17 April 2025.

HEARD ON:

16 April 2025

DECIDED ON:

17 April 2025

For the Applicant:

N Strathern

Instructed by Vanessa Fernihough and Associates

For the First Respondent: L Metzger

Instructed by Strydom M and Associates

For the Second Respondent: S Liebenberg

Instructed by Darryl Ackerman Attorneys

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Prepared on 9 October 2026 · Esheria