

SOUTH AFRICA / JUDGMENT

Moneyweb (Pty) Limited v Media 24 Limited and Another (31575/2013) [2016] ZAGPJHC 81; [2016] 3 All SA 193 (GJ); 2016 (4) SA 591 (GJ); 2016 BIP 326 (GJ) (5 May 2016)

[2016] ZAGPJHC 81

COURT

South Gauteng High Court, Johannesburg

BEFORE

Berger

CASE / FILE NUMBER

31575/2013

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

Source record

HIGH

COURT OF SOUTH AFRICA

GAUTENG

LOCAL DIVISION,

JOHANNESBURG

Case

No. 31575/2013

DATE:

05 MAY 2016

In

the matter between:

MONEYWEB

(PTY)

LIMITED.....Applicant

And

MEDIA

24

LIMITED.....First

Respondent

FADIA

SALIE.....Second

Respondent

JUDGMENT**BERGER, AJ****Introduction**

- [1] The applicant ("Moneyweb") and the first respondent ("Media24") are both in the business of publishing articles on the Internet. These are not their only activities but, for purposes of this case, it is not necessary to list their full range.
- [2] Moneyweb publishes business, financial and investment news, primarily on the Internet, but also on other digital platforms. Media24 publishes online magazines and newspapers, including Fin24, an online financial publication. Moneyweb and Media24 are therefore direct competitors. The second respondent was the editor of Fin24 at all relevant times.
- [3] Moneyweb seeks a declaration that the publication of seven articles by Media24 was unlawful. Moneyweb contends that Media24 infringed its copyright under the Copyright Act 98 of 1978 ("the Act"), alternatively that Media24 has engaged in unlawful competition. It also seeks to interdict the continued publication of the articles, and a further declaration that Media24 and the second respondent are liable for the damages suffered by it as a result of the publication of the articles. All the articles were published under the banner of Fin24.
- [4] Moneyweb has not yet quantified its damages claim. It seeks an order that the extent of its claim be determined in a subsequent enquiry in the event that I hold the respondents liable to compensate it.
- [5] Seven articles were first published on Moneyweb's website. Although the articles published under the banner of Fin24 are not

word-for-word copies of the articles published by Moneyweb, it contends that Fin24 unlawfully "copied, appropriated and/or

plagiarised[1] its earlier articles.

- [6] The parties filed extensive heads of argument and argued the matter before me over two days. Three issues appear to be at the centre of this matter:
- a. First, there is a dispute concerning the originality of Moneyweb's articles. Media24 argues that Moneyweb has failed to prove originality in any of its articles.
 - b. Second, if Moneyweb is able to prove originality in any of its articles, the issue arises as to whether Media24 has reproduced a substantial part of the relevant article. Media24 admits reproduction of part of the Moneyweb articles but denies that the reproduction was substantial.

- c. Finally, Media24 contends that it is absolved from liability by virtue of the statutory defences in sections 12(1)(c)(i) and 12(8)(a) of the Act.

Originality

- [7] Section 2(1) of the Act provides that certain works, including literary works, shall be eligible for copyright "if they are original". The Moneyweb articles clearly fall within the definition of literary work". That much is common cause.
- [8] There is no definition of "original" in the Act. What is clear is that creativity is not required to make a work original. A work is considered to be original "if it has not been copied from an existing source and if its production required a substantial (or not trivial) degree of skill, judgment or labour."*
- [9] In *CCH Canadian Ltd v Law Society of Upper Canada*[2] the Supreme Court of Canada held that "an original work must be the product of an author's exercise of skill and judgment. The exercise of skill and judgment required to produce the work must not be so trivial that it could be characterized as a purely mechanical exercise. While creative works will by definition be "original" and covered by copyright, creativity is not required to make a work "original" "
- [10] It is nevertheless possible to achieve originality even where the author of a work makes use of existing material. *Nugent J* (as he then was) approved the test to be applied in such circumstances:[3]

"... An artistic work is eligible for copyright if it is 'original'. The following passage from *Copeling Copyright and the Act of 1978* at p 15, which was cited with approval in *Klep Valves (Pty) Ltd v Saunders Valve Co Ltd* [1987] (2) SA 1 (A) at 22H - 23A, conveniently summarises what is meant by that concept:

To be original a work need not be the vehicle for new or inventive thought. Nor is it necessary that such thoughts as the work may contain be expressed in a form which is novel or without precedent. 'Originality for the purposes of copyright, refers not to originality of either thought or the expression of thought, but to original skill or labour in execution. All that is required is that the work should emanate from the author himself, and not be copied ...

The requirement that the work should emanate from the author himself and not be copied must not be interpreted as meaning that a work will be regarded as original only where it is made without reference to existing subject-matter. Indeed, were this so the great majority of works would be denied the benefit of copyright protection. It is perfectly possible for an author to make use of existing material and still achieve originality in respect of the work which he produces. In that event, the work must be more than simply a slavish copy; it must in some measure be due to the application of the author's own skill or labour. Precisely how much skill or labour he needs to contribute is difficult to say for much will depend upon the facts of each particular case."

[11] There was some dispute before me as to whether the “sweat of the brow” test is part of our law. Mr Puckrin SC, who appeared on behalf of the respondents with Mr Spottiswoode, submitted that “pure industriousness or ‘sweat of the brow’ is not (or at least no longer) the test for originality. ... This is not to say that ‘actual time and effort’ expended by the author is of no consideration (it remains a material factor to consider)... ” He relied for these submission on the decisions in *Haupt*, *CCH Canadian* and *Waylite Diary CC v First National Bank Ltd* [1994] ZASCA 135; 1995 (1) SA 645 (SCA) at 6491.

[12] Mr Ginsburg SC, who appeared on behalf of Moneyweb with Mr Budlender and Mr Marriott, insisted that “sweat of the brow” is still the test in our law.

[13] In *Haupt*, having quoted from *CCH Canadian* at its par 25,[4] Streicher JA noted:[5]

“It should be noted that no mention is made of labour. In para 24 it is said f(t)he “sweat of the brow” approach to originality is too low a standard’. In this regard the Canadian law differs from our law and the law of the United Kingdom, as also the Australian law. See *Waylite Diary CC v First National Bank Ltd* 1995

(1) 645 (A) at 652G - 653C and, in respect of the Australian law, Ricketson *The Law of Intellectual Property: Copyright, Designs*

and Confidential Information at paras 7.35 and 7.60, where it is said: s(l)f the expression in question represents the independent application of knowledge, judgment, skill or labour on the part of the author, this will be sufficient for the statutory requirement (of originality).’ Whether we should, in due course, follow the Canadian approach need not be decided now.”

[14] In *Waylite Diary CC v First National Bank Ltd*, a case concerning the subsistence of copyright in the pages of a diary, Harms JA wrote:[6]

While it is true that the actual time and effort expended by the author is a material factor to consider in determining originality; it remains a value judgment whether that time and effort produces something original”

[15] It seems to me that the expression “sweat of the brow” is imprecise and capable of being misunderstood. A court will only be able to determine originality after it has weighed up all relevant considerations and made a value judgment. Our law still regards the time and effort spent by the author as a material consideration in determining originality. But the time and effort spent must involve more than a mechanical, or slavish, copying of the existing material. In other words, there must be sufficient application of the author’s mind to produce a work that can be judged to be “original”: “ Where a work embodies existing subject matter the court must decide whether its author has expended sufficient skill and labour to justify a claim that the work is original”¹

[16] It should also be noted that a determination of originality applies to the work as a whole, and not to select parts: uUnder the Act the inquiry is whether the ‘work’... was original. The inquiry is not whether its parts are original”⁶

[17] I turn to consider whether Moneyweb has established that the articles, in respect of which it claims copyright protection, are original. Moneyweb correctly accepts that it bears the onus of proving originality.

The first article: "Annual packages for MPs may reach well over R1m"

[18] I shall refer to this article as Moneyweb 1. It was published on 25 July 2012 at 5:53pm and was written by Ms Kim Cloete, a freelance contributor contracted to Moneyweb to write articles for publication on its website. As with all the other Moneyweb articles, Media24 does not dispute that the author of the article is a "qualified person" in terms of section 3(1)(a) of the Act, that Moneyweb too is a "qualified person", in terms of section 3(1)(b) of the Act, and that Moneyweb is the owner of the literary work. The article is set out below. The underlining is my own, intended to mark the parts that were reproduced in the related Fin24 article.

Annual packages for MPs may reach well over R1m Updated: Now with a table of the proposed salaries.

CAPE TOWN - Members of Parliament may soon be earning a basic salary of nearly R900 000 a year if the President accepts the 5.5% salary increase that's been recommended for them.

The proposed annual salary for MPs of R889 383. is apart from a range of perks including S & T. numerous flights, pension, medical aid and virtually free accommodation in Cape Town when Parliament is in session.

The recommended salary increase for all public office bearers - from the president to municipal councilors - was announced by the Independent Commission for the Remuneration of Public Office Bearers, at a media briefing in Cape Town.

President Jacob Zuma will consider the recommendations by the commission, headed by Judge Willie Seriti. In the past, the president has adjusted the proposed increases, although last year, he followed

through with the commission's recommended 5% increase.

in terms of the 5.5% raise for 2012/2013, the president's salary could increase from R2' 485 839 to R2 622 561.

The Deputy President, the Chief Justice, the Speaker of the National Assembly and the Chairperson of the National Council of Provinces could each earn a basic salary of slightly over R2,3m.

The proposed increase would hike the salaries of ministers to just over the R2m mark, with deputy ministers earning around R1.6m a year.

The recommendations could lead to premiers earning R1.888m a year, with mayors earning slightly over R1m a year. Salaries of judges would range between R 1.8m for a Constitutional Court judge to R1.45m for a judge in the High Court.

The commission said it had taken a basket of factors into account, including trends in the consumer price index (CPI), national market trends in the private and public sector and affordability. Seriti said 'relevant stakeholders' had been consulted, although this did not include civil society.

Commissioners consulted with the Ministers of Finance, Justice and Public Service and Administration before making their recommendations.

"The minister of finance has differed with our recommendations in previous years, but this year we received a positive response from all ministers, including the minister of finance," Seriti said, adding that Gordhan's views play a role "although he does not dictate to us."

Schedule 1 [figures and headings omitted]

Schedule 2 [figures and headings omitted]

Past recommendations and the president's determinations had also been noted, together with economic conditions in South Africa.

Seriti said he wouldn't be surprised if the 5.5% increase was contested by magistrates, who objected to the 5% recommendation last year. Magistrates have taken legal action against the commission and the president based on last year's 5% increase.

"Magistrates were unhappy with our decision last year they feel they're entitled to a higher increase. The chances are very high that they could challenge us again this year," said Seriti.

The recommended 5.5% increase would potentially push the annual salaries of ordinary magistrates up to R708 000, with senior magistrates

touching nearly R779 000 and regional and chief magistrates earning R944 000 a year.

The other group of public officials that the commission is concerned about are local councilors. A 5.5% increase would take them to an annual salary of R400 000.

Seriti said municipal councilors were sometime the target of derision. The homes of several councilors have been torched during service delivery strikes "yet we've discovered they have no insurance cover," he said.

"The remuneration of local councilors needs to be looked at in its entirety."

The basic salary increases for members of parliament may not sit well with ordinary South Africans, aware of the gulf between rich and poor in South Africa and the perception by many people that their MPs are not delivering value for money.

The commission doesn't deal with the perks which boost the pay packages of MPs in particular.

Questioned about whether the commission should be looking at all the perks before making recommendations on basic salaries, Seriti said it was outside the legal framework he was operating in.

"The Act is silent on who is to implement that."

The commission chairperson said his team had been investigating the possibility of introducing performance-based increases instead of an across-the-board increase.

"We're investigating whether to move away from a 'one size fits all' policy," he told Moneyweb.

Seriti said a project on performance-based remuneration had been stalled due to budget constraints, but not before getting 'tentative views' from other countries, including the US and the UK.

The salaries of chief whips of the ANC and DA would nudge up to nearly R1.3m, with chairpersons of committees earning around R1.1m a year.

The commission said the 5.5% suggested increase was in line with Gordhan's comments during his annual budget speech calling for moderation in annual salary increases.

Questioned about when the salary increases could be approved by the President, Seriti quipped: "Your guess is as good as mine, although it's usually 2 to 3 months after our determination."

[19] Ms Cloete wrote Moneyweb 1 after she had attended and participated in a press conference in Parliament. At the conference she took notes and asked questions of delegates. About the article, she says that it "is an original work and required my independent effort, skill and expertise to write." Having written it, she emailed it to Moneyweb's editor who made certain adjustments before it was published.

[20] Mr Puckrin submitted that this evidence is not sufficient to prove

originality. He argued that it was incumbent on Moneyweb to put up further evidence, such as Ms Cloete's notes of the press

conference and an explanation from her as to how she went about constructing the article.

[21] In *Jacana Education (Pty) Ltd v Frandsen Publishers (Pty) Ltd* P Schutz JA noted that "... the existence of prior material tends also to limit the scope for originality and to require more exacting proof of its existence than is the case with truly original works"

[22] The court *a quo* in *Pyromet (Pty) Ltd v Bateman Project Holdings Ltd* held that the evidence in that case was not sufficient to prove

originality,[7] For Goldstein J, the evidence of Mr Sidorski created more questions than answers:

"The applicant alleges that it is the proprietor of the copyright in the drawings referred to in paragraphs 2 and 4 of the draft [order]. There are 240 of such drawings attached to the affidavit of Mr Eugenius Daniel Sidorski which affidavit is itself an annexure to the founding affidavit. Sidorski states that as the applicants supervising engineer he supervised the making of each of the drawings. He identifies each of

the draftspersons concerned and gives the dates on which each of the drawings were made. He says that he 'personally witnessed each person making the drawings listed, at the Applicant's premises in Johannesburg (where) each drawing was made under (his) supervision V'[8]

"Sidorski's affidavit ends with paragraph 8 which reads: 'Each drawing was original in that it was the product of each author's personal skill, knowledge and labour and was not copied from any other drawingV'[9]

"... I find the statement in paragraph 8 very cryptic and bald. The drawings contain considerable detail. I find it difficult to believe that each is the product of the personal skill, knowledge and labour of the author. I find it difficult to believe too that none was copied from any other drawing. Certainly Sidorski fails to explain how each of the authors was able to produce his or her drawing in vacuo without reference to any other drawing. In my view there must overwhelmingly on the probabilities have been copying involved in the production of at least portions of the drawings. The problem created for the applicant's case, insofar as it relies on copyright is that my conclusion, that there must have been some copying, makes it impossible for me to find which portions of the 240 drawings are the subject of copyright and which are not.

[23] Nugent J took a different view of the evidence, finding that it was "not altogether clear what caused the learned judge to conclude that Mr Sidorski's evidence was improbable "u Nugent J continued:[10]

"However, the submissions made on behalf of the respondents were directed to a different point. It was submitted, as I understood it, that the allegations made by Mr Sidorski did not constitute evidence at all, and were no more than conclusions, unsupported by established facts. ..

" Where existing material has been used to create the relevant work, there may well be cases in which detailed evidence will be required as to the manner in which the work was created to show that notwithstanding use being made of an existing work, the nature and extent of the author's contribution was such as to constitute more than mere copying. Furthermore, the author might, in such circumstance, be the only person with sufficiently detailed knowledge of what has been done in order to establish that his contribution was original. However, in my view, there can be no rule of thumb in that regard, for each case will necessarily depend upon its own facts"

'In the present case there is no suggestion in the evidence that the authors merely transposed, or even had reference to, existing works in the course of creating the drawings. ..."

"... f do not agree that [Mr Sidorski's] allegations amount to no more than

conclusions. He said that he observed the authors producing the drawings by the application of their 'personal skill ... and labour and without copying from any other drawing. Those, in my view, are observable facts, which, if they are correct, support his conclusion that the

drawings were original. I do not think the appellant was required to go further in the absence of any proper challenge to those allegations”

[24] In my view, this is a case in which more evidence was required to

establish that Moneyweb 1 is an original work. It is common cause that the article is based on the information that was made available

at the press conference. I do not know how much of the article is Ms Cloete’s own work or simply a repetition of what was said in her presence or contained in a written press release. Simply put, I am not able to discern the nature and extent of her contribution.

[25] Her statement that the “article is an original work and required [her] independent effort, skill and expertise to write” is indeed no more than a conclusion. I have no basis from which to

assess her independent effort, skill and expertise. The fact that she attended the press conference, took notes and asked questions does not mean that the article is not a mechanical repetition of existing material. How does the article compare against the material on which it is based? Unlike Mr Sidorski’s allegations, Ms Cloete’s statement on originality contains no factual allegations that could support the conclusion it reaches. Accordingly, I find that Moneyweb has not established that Moneyweb 1 is an original work.

The second article: “Group Five hits rock bottom”

[26] I shall refer to this article as Moneyweb 2. It was published on 13 August 2012 at 5:08pm and was written by Ms Sasha Planting, a freelance contributor contracted to Moneyweb to write articles for publication on its website. The article is set out

below, with the underlining of those parts that were reproduced in the related Fin24 article.

Group Five hits rock bottom

But earning expected to rally with construction materials business.

CAPE TOWN - Construction and engineering firm. Group Five, has hit rock bottom but expects to improve within the next year.

This is according to CEO Mike Upton, who noted an uptick in construction orders combined with some tough cost cutting and reorganising of the business, will position the group for a return to earnings profitability in 2013-

Revenues remained flat at R8.8bn. but headline earnings per share fell by 64,4%.

The biggest reason for the loss was contract losses in the Middle East — where cash strapped clients are finding any excuse not to settle their debts. In addition, impairments from preciously discontinued operations in India and impairments of assets in the construction materials businesses, which are being sold off, caused further losses.

While the losses from the Middle East were bigger than expected, the group has no plans to exit that market. The aim is to cut its losses and settle payment disputes now, rather than let the situation drag out. Upton says. The group will then lie low — so to speak — until market conditions improve there.

Light In the tunnel

This is the last year of pain when it comes to the construction materials business. Two businesses in this division have been sold and the remainder will be disposed of before the calendar year is out. Upton estimates over R1bn worth of shareholder value was destroyed through acquisitions bought at the height of the construction cycle.

Meanwhile Africa is where the action is. The group has won business in East and West Africa, particularly in the power and energy sectors where it has won 13 new mining projects and three power plants.

Chinese contractors are a very and real threat. "There are upwards of 70 Chinese construction companies across the bigger markets."

However Upton notes that Group Five does not come head to head with these companies too often. "They usually win their business at a government to government level." When it comes to direct head to head tenders, Group Five has the benefit of a strong track record. "We have built up a good name for ourselves, particularly in the mining sector."

Infrastructure orders in SA are still slow in coming, and have also curbed revenue growth. But Upton believes this is changing. "Infrastructure development [or the lack of it] in SA has become a hot potato and there is now real political pressure to get projects moving." He adds that while the planning is taking place, construction companies will not see the orders for another 12 to 18 months.

Along with its peers, Group Five has had a torrid three years, after the boom years of the 2000s. However many analysts are tipping the sector for growth, arguing that the only way is up. But Vestact equities analyst Byron Lotter remains cautious. While the sector has good fundamentals and appears to be turning, there are risks, he says. For one there are big question marks over government spending. "Government can't even pay current contractors, where is the money coming from?"

And when the money is available, the competition for projects is fierce and margins are tight. "In my opinion this is a very cyclical business and it's one where it is difficult for the individual investor to stomach the troughs."

Group Five shares traded flat on Monday at R22.85, while the construction sector fell 0.47%.

- [27] Ms Planting wrote Moneyweb 2 after she had participated in a conference call during which the CEO of Group Five, Mr Mike Upton, had spoken to journalists and analysts following the publication of the company's annual results. Ms Planting echoes Ms Cloete: " This article is an original work and required my independent effort, skill and expertise to write " Having written the article, she emailed it to Moneyweb's editor who edited it and wrote the headline before it was published.
- [28] The evidence adduced by Moneyweb in relation to the originality of Moneyweb 2 is even thinner than the evidence relating to Moneyweb 1. Unsurprisingly, it also suffers from the same deficiencies. I do not know how much of the article is Ms Planting's own work nor how much she has simply repeated of Mr Upton's words.
- [29] I am not able to discern the nature and extent of her contribution. I do not know to what extent Moneyweb 2 differs, if at all, from the existing material on which it is based. Her statement that the "article is an original work and required [her] independent effort, skill and expertise to write" is factually bare. Accordingly, I find that Moneyweb has not established that Moneyweb 2 is an original work.

The third article:"McDonald's plans to launch McKitchen"

- [30] I shall refer to this article as Moneyweb 3. It was published on 26 August 2012 at 11:12pm and was written by Ms Eleanor Seggie, an employee of Moneyweb. I have set out the article below and underlined those parts that were reproduced in the related Fin24 article.

McDonald's plans to launch McKitchen

The fast'food outlet is looking at innovative ways to keep your plate full of its food.

JOHANNESBURG

- "It's a very difficult market to enter right now. Whoever wants to enter this market needs to come In with vision and heaps of cash, a full commitment and a long-term plan. If you're not going to come in with that you're not going to survive," says Greg Solomon, McDonald's South Africa MD.

He was leading journalists on a recent media tour of the Woodmead restaurant.

McDonald's takes long-term positions on people (16 years), initiatives (eg 24/7 outlets) and on leases (eg, 20 years). As such, it owns 68%-70% of its property portfolio in SA.

"We continue to invest... capita! into this business, by growing 20-30 new restaurants every year - that's hundreds of millions of capital spend." The first McDonald's was opened in South Africa is November 1995 and in the last 11 years not one has been closed, although Solomon says he's eyeing one now as its performance isn't up to scratch. McDonald's SA plans on opening 18-22 restaurants this year, around the country.

One of the newbies, in Victory Park. Johannesburg, will debut in the next two months.

Though it was initially referred to as a "McKitchen," it was later clarified that the Victory Park branch will be implementing and testing minor changes to the kitchen and service design, to improve efficiencies. If effective, it may be implemented in other kitchens. Solomon wouldn't say more, but hinted that it will feature a modified cooking platform and new innovations to the front counter and beverages.

However, he maintains that McDonalds is a "people's business" and he aims to make it into a more renowned training institution. Currently the fast-food outlet spends approximately R21m a year on training.

Big Mac anyone?

The company's most successful sales product is the Big Mac: although it got off to a slow start, it now makes up 25% of its business. Second place (on volume) goes to its cheeseburger.

Chicken forms just over 30% of the business revenue. The biggest selling chicken product is the Chicken Foidover - a locally adapted product introduced as part of its

'glocal' strategy, along with a beef product called McFeast, and fresh corn, which is building nice traction as an alternative to fries.

However, it won't steer too much away from its core US brand though — so don't expect chicken McFeet in the near future.

Breakfast now forms 11% of its revenue and Solomon reveals there may be a lot of menu innovation in the pipeline over the next two years.

Other significant parts of the business include beverages as well as dessert: Mcflurries have massive equity — "up there with chicken foldovers and quarter pounders", says Solomon.

Over the past few years, the company has introduced a number of firsts: the drive- through, then breakfast, then 24/7 restaurants and most recently the McCafe with a range of coffees, teas and frappes.

The newly launched McCafe only forms 4-6% of total turnover as yet. But given its continually evolving snack, savoury and baked goods menu as well as the massive investment in very decent coffee makers, this may grow over time.

"We don't want to be a plastic canteen that sells burgers. We are not trying to be a fine dining restaurant, but a casual, informal eating out experience for a family that offers great food, in an environment that feels like home with good service." says Solomon.

The Ramaphosa touch

Businessman Cyril Ramaphosa's company, Shanduka, acquired McDonald's 20-year master franchise last year to run all McDonald's restaurants in SA - a combination of franchise and corporate-owned stores.

Solomon explains that Ramaphosa is involved actively at a high level — he understands the detail but lets Solomon run the business.

In response to a Moneyweb question on what Ramaphosa has brought to the table as yet, Solomon emphasises that Ramaphosa is not going to change the brand and that he brings leadership, vision, accelerated growth, as well as the capital and resources to prompt growth. Also the merger allows for a local, independent and accountable view on investments where they are responsible for their own return and not dictated to by the New York stock exchange.

Tough times

This year will be tough, continuing on to Q1 and Q2 next year, after which there will be a slight upturn in mid-2013, warns Solomon, adding that the company is preparing to maximise on the latter.

During its 17-year tenure in SA, the company has weathered a number of economic downturns. He says it expected hard times in 2011 and 2012 and prepared for them. Philosophically he says: "If you're not resilient enough to weather the storm, you probably need to get out of this line."

Its best year in terms of organic growth, for its first 15 years at least, was 2010 - possibly due to the World Cup. Although the past three years have been the best ever, organic growth has slowed down and the company is experiencing "really tough backdoor profitability pressures that are hitting the business."

"In the highly competitive informal eating-out sector, where companies are fighting for market share, people need to understand their

business's [evolution] over the past five years ... and have vision, intelligence, stability and brevity to see where they want to be in the next five years," he advises.

[31] Ms Seggie wrote Moneyweb 3 after she and two other journalists from other media groups had attended a media visit at McDonald's Woodmead restaurant. Moneyweb's editor then edited it and wrote the headline before it was published.

[32] Ms Seggie states that, in terms of her contract of employment with Moneyweb, she wrote Moneyweb 3, other articles and various headlines. She adds: "These articles and headlines are original works and required my independent effort, skill and expertise to write"

[33] Moneyweb has not adduced any further evidence relating to the manner in which Ms Seggie went about writing Moneyweb 3. I do not know who hosted the media visit on behalf of McDonald's; whether the presentation was only oral; whether there was a written press statement issued as well; whether Ms Seggie took notes; and to what extent Moneyweb 3 differs from the presentation given. Even if I were to assume from the content of the article that Mr Greg Solomon hosted the media visit, the other questions remain unanswered.

[34] As with the previous articles, I do not know how much of Moneyweb 3 is Ms Seggie's own work nor how much she has simply repeated of the presentation at the media visit.

[35] I am not able to discern the nature and extent of her contribution to the article. I do not know to what extent Moneyweb 3 differs, if it differs at all, from the existing material on which it is based. Her statement that the "article is an original work and required [her] independent effort, skill and expertise to write" has become a mantra to be recited by all the authors of the Moneyweb articles. But it adds nothing because it simply concludes without providing the facts on which it is based. Accordingly, I find that Moneyweb has not established that Moneyweb 3 is an original work.

The fourth article: "Hout Bay castle sold for R23m"

[36] I shall refer to this article as Moneyweb 4. It was published on 14 September 2012 at 5:42pm and was written by the late Ms Michel Schnehage, a property journalist who was contracted to Moneyweb to write articles for publication on its website. There is understandably no direct evidence from Ms Schnehage.

[37] { have set out the article below and underlined those parts that were reproduced in the related Fin24 article.

Hout Bay castle sold for R23m

Furniture and trimmings Included in the deal.

JOHANNESBURG

- A Russian businessman has bought a six-storey castle (pictured) nestled in the Karbonkelberg on the outskirts of Hout Bay in the Western Cape for R23m.

The castle is situated high up against the mountain and overlooks the bay and Hout Bay beach.

Sotheby's International Realty's Nina Smith says the castle was run as a guesthouse for several years and was once owned by a foreign company.

It was originally built by Cape Town businessman Reynier Fritz who began the project in 1986 and completed it in 1998, using small facebrick which gives it an antique feel. "Over

12 years it just evolved. As he (Fritz) got money, he would build another wing."

The majestic structure is a replica of the Schloss Lichtenstein castle in southern Germany which is perched on a cliff located near Honau in the Swabian Alb, Baden-Württemberg. The current castle was constructed between 1840 and 1842.

The Hout Bay castle is about ten minutes from the Hout Bay village and is accessible only by private road and helicopter.

Smith said the castle blended into the Karbonkelberg with its unique architecture and structure. “It was love at first sight for the owner,” said Smith, adding that the new owner had purchased it for private use.

During its years as a bed and breakfast it was extremely popular among overseas visitors to the Cape and was also a sought-after venue for weddings and conferences, with a banquet hall able to accommodate up to 200 people.

The castle is situated on 8500m² of terraced land with a natural waterfall and swimming pool-

The main hall is on ground level with vaulted ceilings, stained-glass windows and a fireplace including a dining area with a table able to seat 24 guests.

The castle also has 13 en-suite bedrooms on different levels with a library, billiard room and bar.

[38] Although Moneyweb could get no direct evidence from Ms Schnehage, it has put up more evidence in relation to Moneyweb 4 than in relation to the three previous articles. It is undisputed that the source of the article was a press release issued by Sotheby’s International on 13 September 2012, the day before the article was published, a copy of which has been put up. Ms Schnehage also interviewed Ms Nina Smith of Sotheby’s and sourced additional

material. Ms Seggie wrote the headline and sub-headline, and also edited the article.

[39] Although Moneyweb 4 contains more information than the press release, the difference is insubstantial. Indeed, it is quite trivial. The article is largely a copy of the press release. In my view, Ms

Schnehage has not contributed enough to produce an original work. Accordingly, I find that Moneyweb has not established that Moneyweb 4 is an original work.

The fifth article: “Angloplats’ Griffith responds to Shabangu outburst

[40] I shall refer to this article as Moneyweb 5. It was published on 16 January 2013 at 9:40am and was written by Mr Ryk Van Niekerk, the editor of Moneyweb and the deponent to its founding affidavit. I have set out the article below, with the underlining of those parts that were reproduced in the related Fin24 article.

Angloplats’ Griffith responds to Shabangu outburst

Cites JSE regulations ruling sensitive information limiting open discussion before announcement.

JSE regulations ruling sensitive information and an apparent difference of opinion between the Department of Mineral Resources (DMR) and Anglo Platinum may shake the seemingly precarious relationship between government and the mining sector even further.

Amplats' share price took a beating on Wednesday, falling by 5.95% by 11 hi5. Parent company Anglo American's price is down 3.2%.

Following the public outburst from Susan Shabangu of the DMR in reaction to Amplats1 restructuring plans. Amplats CEO Chris Griffith responded that there was indeed a public process, but that JSE regulations governing sensitive information prevented a totally transparent discussion with ail stakeholders.

Shabangu accused Amplats of being irresponsible, that it acted in bad faith and questioned the company's motives. Griffith said during the SAFM Market Update with Moneyweb on Tuesday night that he will not get involved with a public spat with the minister.

"Clearly the minister is unhappy about a number of things, and I'm going to need to go back to the minister and sit down with her and work through the concerns that she may have."

However, Griffith added that due to the regulations regarding sensitive information the company could not discuss its plans openly with ail stakeholders. "I think we would argue that, given the narrow range that we have to consult, whilst we are developing our plans before it becomes public and before we get obliged in terms of the Securities Exchange to make all of that information public ... we were not in a position to talk about some of our future plans with every person. Even the nature of that conversation with government we've got to be careful about."

Griffith said the platinum industry has been under severe financial pressure for a number of years. "We have continuously engaged with ali stakeholders, including different tevels of government, in addition to that, the level of unsustainability of this business reached a peak, you'll recall, in 2010 when Anglo American Platinum had to go back to its shareholders after reaching a debt of R20bn, to say to shareholders, look, we need a rights issue, we need you to reinvest and then raise R12.5bn. I think that was the first indication of the kind of difficulty that the industry was under."

Griffith said Anglo American announced the review of the platinum operations at the beginning of 2012. This coincided with an industry analysis by the platinum industry task team to talk about structural changes in the sector. "So this is likely to be a difficult period. I don't think anyone expected either government or unions or ourselves or civil society to say it's a good idea that we have retrenchments."

"But the fact is that if we don't do something about the company eventually 60 000 people in the company will have no employment. We seek to work with our stakeholders, if some of our stakeholders are feeling uncomfortable about that we need to sit down with them and work through that. And if there are difficulties we need to patch those up."

Peter Major from Cadiz Asset management commented that it would be hard to make everyone happy. "All industries have gone through this - computer, airlines, and definitely automobiles. And so this is a natural part of capitalism."

He even speculated tongue in cheek that there might be room for nationalisation.

“There's going to be four shafts available and they said they are going to be looking for a buyer for Union section. How open is government to that?”

Major added that it would be difficult for other stakeholders to influence the implementation of the plan.” Anglos have put a lot of work in this and they have thought of all the alternatives. What makes it a little bit sad is it's too hard for the other role- players to completely change. You've had 10 years of double and triple the inflationary cost increases on the platinum mines. That is really entrenched. It's in the DNA of everybody's system - government, labour and the company. And so I think it's a little too late for the employees to say OK, we'll bend now. Or for government to say we'll do anything you need just don't close those shafts."

Earlier Shabangu said she was very disappointed by Anglo Platinum's announcement, as the company did not engage the department. "They made the announcement before engaging us. I must indicate that Anglo Platinum contacted us last week on Tuesday and requested a meeting. They wanted to meet today (Tuesday). Then yesterday (Monday) they said they wanted to meet yesterday, as if I am waiting for them while I am doing other work. I really feel that they are undermining the relationship between us and them."

Shabangu said Anglo Platinum's announcement creates more uncertainty among foreign investors.. "In the past we would talk and engage about issues before we go public. In this case Anglo Platinum was unilateral. They said last year that they will engage on the issues, but they only gave us seven days. It is bad faith ... Anglo has operated in SA for many years. What is their agenda and intention to behave in this fashion?"

This follows Amplats' announcement that it plans to close four shafts in the Rustenburg area and sell its Union mine. These plans are all the result of a review of its operations undertaken by its parent Anglo American in a bid to return the company to long-term profitability and are expected to affect as many as 14,000 jobs, 13,000 of which will be in the Rustenburg area.

These steps would deliver R3.8bn in cost savings by 2015.

[41] Mr Van Niekerk wrote Moneyweb 5 based on an interview done by a Moneyweb journalist, Mr Hilton Tarrant, with Mr Chris Griffith, the Chief Executive Officer of Amplats. The interview had aired on 15 January 2013 on the radio programme SAfm Market Update.

[42] The interview was recorded and transcribed by Moneyweb. Mr Van Niekerk used the transcript of the sound recording to source quotes from Mr Griffith. Ms Seggie then edited the article and wrote the headline and sub-headline before it was published*

[43] Mr Van Niekerk explains how he went about constructing Moneyweb

5. He says that he listened to the sound recording and went through the entire interview to extract the most salient quotes. He describes the interview as "in-depth" but does not indicate the length of the interview or the transcript. He does say that he sought to "extract the most salient quotes", implying that he applied his mind and excluded that which he did not need for purposes of his article.

[44] In my view, Mr Van Niekerk applied his mind to the transcript and sought to write an article that captured the essence of the interview with Mr Griffith. Mr Puckrin submitted that Moneyweb ought to have produced the transcript in evidence. I do not agree. Just as Mr Sidorski was able to testify to what he saw, so too can Mr Van Niekerk. His evidence that he read the entire transcript and selected what he believed to be the most salient quotes stands uncontested. I note too that, although Moneyweb 5 Is focused on the interview with Mr Griffith, it also contains input from other sources, i.e. Minister Shabangu and Mr Peter Major.

[45] It is clear that Mr Van Niekerk has not slavishly copied from the

transcript. In the circumstances, I am satisfied that Moneyweb has proved that Moneyweb 5 is an original work.

The sixth article: "Defencex mastermind rallies support"

[46] I shall refer to this article as Moneyweb 6. It was published on 9 March 2013 at 3:07pm and was written by Mr Malcolm Rees, an employee of Moneyweb who was responsible for writing articles for publication on its website. I have set out the article below and underlined those parts that were reproduced in the related Fin24 article.

Defencex mastermind rallies support

Walker calls for calm and support, following a vague, brief explanation.

Over a thousand ardent supporters of the embattled Defencex scheme flocked to the Linder Auditorium on the Wits Education campus on Saturday to hear Chris Walker, the scheme's mastermind, speak.

Those who managed to gain entry to the fully-booked auditorium had paid an alleged R10 a ticket to hear Walker's five-minute explanation of exactly what had gone wrong with his 2%-a-day investment initiative.

Moneyweb was able to gain access to the heavily guarded, members-only event by purchasing a bootleg ticket outside the entrance to the auditorium (see photos below).

Proceedings began with recitals of hymns and prayers. After music played by a Sowetan music group, to which members sung and danced, Walker entered the stage to a roar of support from the crowd.

"You are going to make me cry," were the opening remarks to a very short speech.

In his address, Walker explained that members' monies had been frozen and that no withdrawals from the scheme would be possible "until the investigation is complete."

He explained in the vaguest of terms that the situation had now become "a legal matter" and that he had appointed a top attorney to represent the company during the proceedings.

However, he provided members with no explanation of what had led to the current status of events or made no attempt to justify the legitimacy of the scheme.

"There is nothing more I can say."

No questions were taken from the crowd.

He did, however, suggest that once the legal proceedings had concluded members would once again be able to withdraw funds from the scheme.

To this the crowd murmured in support.

Following this very brief explanation, Walker asked members if they were "angry" to which unanimous agreement was heard.

He then urged that no single party, be it the banks or the media, be blamed for the situation and that calm and responsible behaviour be maintained by members.

He did urge members not to listen to "rumours" and suggested that Defencex is not a company but that Net Income Solutions is.

Defencex does not pay tax, he said, but Net Income Solutions does.

"I am going through a very difficult time," he said, to which sympathetic utterances could be heard in the crowd, "i need to know that I have your support." he entreated.

Support was clearly granted.

Walker then guided the crowd through a "visualisation" exercise.

Members where reminded to stay positive and happy with Walker explaining that it is impossible to have both a positive and negative thought in one's mind at the same time.

For the purpose of guiding members towards positive thoughts, they were asked to visualise the construction of the new Net Income Solutions offices in Cape Town.

The exercise ended with members being asked to visualise the time when they could again be able withdraw funds from the scheme.

"I love you all," said Walker as he departed to the cheers of the crowd.

As this journalist left the auditorium one of the "experts in happiness," a member from Laugh SA, took the microphone to explain the power of joy before spontaneously releasing ever-intensifying barrages of artificial laughter into the crowd. After some brief hesitation, members of the crowd could be heard beginning to join in.

[47] Mr Rees wrote Moneyweb 6 after he had attended an event held at the University of the Witwatersrand. The event was organised so that Mr Chris Walker, the head of an investment scheme known as Defencex, could address participants in

the scheme. It was the first time that Mr Walker had spoken in public about the scheme. Although the event was open only to participants

who had purchased tickets, Mr Rees managed to gain access by purchasing a ticket for R800.

[48] Mr Rees states that Moneyweb 6 and Moneyweb 7 (below) "are

original works and required my independent effort, skill and expertise to write" Having written Moneyweb 6, Mr Rees consulted

with Ms Seggie and Mr Van Niekerk. Together they discussed a headline for the article. Ms Seggie wrote the headline.

[49] Although Mr Rees repeats the mantra common to all the confirmatory

affidavits, I am satisfied that the facts adduced over and above the mantra do establish that Moneyweb 6 is an original work. The Defencex event was not open to the media and it is therefore unlikely that there would have been a written press release.

[50] Mr Rees could not pose as a journalist It is not clear whether he

took notes or recorded and transcribed the proceedings. Although he has not produced his notes, a recording or a transcript, I am of the view that the structure of the article demonstrates that Mr Rees applied his mind to what was happening around him and created an original work that described the event using his own observations and Mr Walker's words.

The seventh article: "Chris Walker breaks the silence"

[51] I shall refer to this article as Moneyweb 7. It was published on 1 July 2013 at 9:58am and was written by Mr Rees. I have set out the article below, with the underlining of those parts that were reproduced in the related Fin24 article.

Chris Walker breaks the silence

Defencex mastermind: SARB thinks i'm the biggest criminal in SA.

JOHANNESBURG

- Chris Walker, the mastermind behind the R8Q0m Defencex scheme has likened the insurance industry and the banks to Ponzi schemes, while admitting that his battles with the Reserve Bank (SARB) could never have been won.

He also claims not to have profited from his embattled business and suggests that the accounts linked to Net-Income-Solutions were frozen to protect the profit seeking interests of the banks and to allow liquidators and attorneys a slice of the R349m pie.

This was revealed in extensive discussions with Moneyweb which ranged from the new schemes and training seminars being promoted by Walker, to his views on Defencex.

Despite repeated attempts by Moneyweb to contact Walker he has thus far never spoken to the media about his controversial scheme or his court battles.

I approached Walker as an interested investor in the network marketing scheme MyFunLife (MFL).

Walker has been promoting the scheme, which bears a close resemblance to a classical pyramid scheme, through his blog www.wealth4africa.com.

After registering to join MFL through Wealth4Africa, I received an email from Walker inviting me to call should I have any questions.

So I did.

On network marketing

Q: The amounts that MFL suggest can be made are huge, is this offer not a little too good to be true?

Walker: "You have to work hard, it won't just happen if you don't do anything ... if you want to earn money you are going to have to refer people and grow a team and in that way it is not too good to be true because it takes a lot of effort.

"Theoretically it is very easy but it is a matter of finding the right people ... it's not like you are going to go out there and find hundreds of people immediately because most people are sceptical and ... think it is too good to be true but it is not because you actually have to work.

He later added that "I have been doing it (network marketing) for 13 years and I still find it difficult (to train people) to go out there and create a team that works."

"People that join through me usually know what to do ... they are people that know me and that trust me and that do it full time, some of them have made more money than me... this is how they make their money."

However, Walker warned that network marketing "is not fun" and he would not advise it as a business venture for "beginners."

Q; MFL seems very similar to a pyramid scheme. There seems to be a fine line between a pyramid and a Network Marketing Scheme (NMS)?

Walker: "there is no such thing (as a pyramid)... Clientele life is an SA company that has been going for years; it works exactly the same way (as a NMS or pyramid) except their product is insurance ... you pay a monthly fee and then you earn down the line from other people paying insurance.

"To my mind insurance is a scam...they take one person's money to pay another person ... the banks are the same, there is no

difference.

"But that is just my take on it."

Q: To me it seems like a pyramid, so if I get in early can i make more money?

Walker: "It does not matter how young the company is. You can go and join a company that is ten years old and still make money. It is a matter of what you do ... that is why I am in the business of trying to open help and support centres for my members so that if they find people to introduce to the scheme we can show them what to do."

He added that "the market I deal with is mostly black ... I like to deal with them because they are not sceptical, they are open and they understand sharing ..."

Q: Did you target the poorer communities because they would be less sceptical?

Walker: "no, no, no. I don't go anywhere and talk to people, I just have a website and people trust me and if they know me they will join ... I don't specifically deal with poor people.

"It is not about that, I am not interested in trying to convince people to join, it is their choice ... they go onto the website and they join so it is really up to them."

On Kipl

Q: I had initially been interested in Kipi, how does that work?

Walker: "With Kipi it is a matter of showing people how to do it... it works like a stokvel. Stokvels are legal in SA ... you don't pay to Kipi or to a bank account its people helping others out."

Q: Stokvels don't generate profits, is it the same then with Kipi?

Walker: "no you can (make a profit), it depends on if you introduce people and if you want your dream to be fulfilled it depends how much you put towards it... it is terrific, it has been working for years."

On Oefencex

Q: What happened with Defencex, it seems like guys lost a lot of money?

Walker: "Well the only reason they have lost money Is because the Reserve Bank closed the bank accounts ... SARB did not like people to be able to make money because they rely on debt, the banks make money from debt.

"And 200 000 people not doing business with them anymore ... this is about the (lost) money, it has nothing to do with the system.

"I know the facts; my lawyers know the facts ... (they were concerned that) people were taking their money out of bank accounts and out of investments," and that is why they got involved.

"I am still with the people who made money and [they] understand. The Reserve Bank closed the banks accounts, they must decide what to do with the money.

"I am not going to win against SARB - that is impossible."

Q: The scheme was R800m. I read that you had only directed R20m to yourself- that doesn't seem like a lot?

Walker: "I didn't take R20m that is a lie, that money was going to be used to buy a brand new office block - everybody knows that but they still twist the truth around. I am very angry about that."

"They say I transferred R20m to my personal bank account, I did not, that money was sent to (inaudible) it was a brand new office block that was going to be used as a HQ".

"We paid out R370m; there was still R349m in the bank account. It is just too much money, they just want their slice. They are going to take millions and millions in fees ... the liquidators are going to get their fees, the attorneys are going to get their fee. That is why they are doing it, to get at the money."

Q: What are the similarities between Defencex and MFL?

Walker: "My business was never an investment in the first place, everybody says it was an investment, everybody says it was 2% a day but nowhere on my website did I ever state it was an investment... people just make up their own things."

"MFL is totally different; it works in a completely different way (to Defencex)."

"Defencex was revenue sharing ...traditional network marketing pays out to up ten levels, they don't advertise so they take the advertising budget and they give it to the members ... what they do is take it as a profit and divide by up to ten levels."

"What my business did, was take that profit and divide it by everybody and give them a small little fraction of that so everybody got a piece of the action. So even if you were not part of that team you still got a piece of it."

"In MFL only ten people got paid, in my fund everybody got paid, people don't get that, they don't understand it... everybody shared in the daily profit, not just a certain number of people, it was not very much but it was something."

Q: But was that money generated from recruiting new members?

Walker: "No, there was a product, the product was computer training, personal development and emotional freedom workshops ... you were buying points to attend the workshops."

"Those businesses already existed, we were outsourcing, like time share."

On the future

Q: What do you think the future holds in terms of the SARB case?

Walker: "I am not going to win the case, it is over. They are not going to let me carry on. There is just too much money involved. But I knew that four months ago, so I was not expecting to win."

Q; Are you worried?

Walker: "there is no point in worrying, they will do whatever they want... luckily I still have people on my side that understand, those that know me will understand.

"They may prosecute me but they have to do that to make it seem like I am the bad one not them,.. They will tell you that they are trying to protect people but they don't care about that.

"Anyway, I better not say too much, they listen to all my conversations.

"They think I am the biggest criminal in SA at the moment."

Walker has not responded to requests to comment on a draft of this article.

However, following those requests he posted the following on his Facebook page:

"We have received some inside information that certain media organizations are paid to distort the facts (lie) and discredit any

system that helps people to earn money to reduce/eliminate their debts.

Their objective is to keep the masses poor and dependent on the control system.

What is the control system?"

[52] On 30 June 2013 Mr Rees managed to track down Mr Walker and interviewed him. He posed as a prospective investor and asked many questions. It appears that Mr Rees was the only one interviewing Mr Walker. He wrote Moneyweb 7 after the interview. Ms Seggie and Mr Van Niekerk edited the article before it was published. Ms Seggie also

wrote the headline after consulting Mr Rees and Mr Van Niekerk.

[53] Although the bulk of Moneyweb 7 is a transcript of the interview, it is clear that the transcript has been edited. Words have been omitted in the discretion of the author and/or his editors. The introductory

paragraphs, in Mr Rees's words, set the context of the interview and draw his conclusions. In my view, Mr Rees has contributed more than merely copying the transcript. I am therefore satisfied that Moneyweb has proved that Moneyweb 7 is an original work.

[54] My conclusion, in summary, is that Moneyweb has discharged its onus

of proving Moneyweb 5, 6 and 7 to be original works. It has failed to establish originality in respect of Moneyweb 1, 2, 3 and 4.

[55] Before I turn to the issue of substantiality, it is appropriate that I deal with one of the statutory defences upon which Media24 relies, section 12(8)(a) of the Act. If the subsection applies to any of the Moneyweb articles, those articles would not enjoy copyright protection. It would be fruitless then to engage in a

determination

as to whether there has been substantial reproduction of an article covered by section 12(8)(a) of the Act.

Section 12(8)(a) of the Copyright Act

[1] Haupt t/a Soft Copy v Brewers Marketing Intelligence (Pty) Ltd

[2006] ZASCA 40; 2006

(4) SA 458 (SCA) at 473A-B, par 35

[2] CCH Canadian Ltd v Law Society of Upper Canada 2004 SCC 13; [2004] 1 SCR 339 at par 25 (2004 SCC 13 (Canlii)), cited with approval in Haupt (above) at 473B-C, par 35

[3] Pyromet (Pty) Ltd v Bateman Project Holdings Ltd 2000 BIP 355 (W) at 357-358

[4] Haupt (above) at 473B-C, par 35

[5] Haupt (above) at 473, footnote 9. I note, however, that the dicta in Waylite Diary, concerning originality, are obiter, at 653C-D Harms JA declined to consider whether the appointment pages were original, it being unnecessary in view of his finding that the appellant had failed to establish that the pages were either artistic or literary works for purposes of the Act.

[6] Waylite Diary CC v First National Bank Ltd 1995 (1)-SA 645 (A) at 649I

[7] Pyromet (Pty) Ltd v Bateman Project Holdings Ltd 699 JOC (W)

[8] Pyromet (Pty) Ltd v Bateman Project Holdings Ltd 699 JOC (W) at 702C-E

[9] Pyromet (Pty) Ltd v Bateman Project Holdings Ltd 699 JOC (W) at 702E

[10] Pyromet (Pty) Ltd v Bateman Project Holdings Ltd 2000 BIP 355 (W) at 359 - 360 (my underlining)

[11] My underlining

[12] Dean: Handbook of South African Copyright Law (30 September 2015), at 1-98B to 1-98C, par 9.9.1 (my underlining)

Handbook of South African Copyright Law (above), at 1-98C, par 9.9.2

[13] Handbook of South African Copyright Law (above), at 1-166C to 1-166D, par 13.6

[14] Galago Publishers (Pty) Ltd v Erasmus 1989 (1) SA 276 (A)

[15] Galago Publishers (above) at 280B-E (my underlining)

[16] Respondents' Heads of Argument, par 23 (underlining in the original)

[17] Laddie, Prescott and Vitoria, The Modern Law of Copyright and Designs (4,h edition), at p 82

21 Copinger and Skone James on Copyright (16th edition) at 7-30

[19] Express Newspapers Pic. v News (UK) Ltd [1990] 1 WLR 1320

[20] Express Newspapers (above) at 1324E-F

[21] Express Newspapers (above) at 1325C

[22] Walter v Lane [1990] AC 539

[23] Sands & McDougall Proprietary Ltd v Robinson (1917)23CLR49

[24] Express Newspapers (above) at 1326H - 1327A (my underlining)

[25] See also Juta & Co Ltd v De Koker 1994 (3) SA (T) at 504D - 505C

[26] Dean, Handbook of South African Copyright Law (2015) at 1-4D to 1-4E, par 1.4

[27]

[2001] EWCA Civ 1142; [2001] 4 All ER 666 (CA)

[28] Section 30(2) of the Copyright, Designs and Patents Act 1988 provided: „Fair dealing with a work (other

than a photograph) for the purpose of reporting current events does not infringe any copyright in the work

[29] Ashdown v Telegraph Group (above) at 683b-c, par [66]

[30] Ashdown v Telegraph Group (above) at 683g to 684c, par [70]; See also Laddie, Prescott and Vitoria,

The Modern Law of Copyright and Designs, vol. 1, p 754, par 20.16

[31] Dean, Handbook of South African Copyright Law (2015) at 1 -1, par 1.1

[32] It too may be limited by law of general application: section 36 of the Constitution.

[33] The Constitutional Court has recognised that intellectual property rights (attaching to registered trademarks) may be limited by the right to freedom of expression: Laugh ft Off Promotions CC v SAB International (Finance) BVt/a SABMark International (Freedom of Expression Institute as Amicus Curiae) 2006 (1)SA 144 (CC).

[34] Section 6(a) of the Act. In terms of section 6(b), publication constitutes an infringement of copyright if

the work "was hitherto unpublished”.

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/ZAGPJHC/2016/81.html>

CASE PAGE <https://chat.esheria.ai/case-law/south-africa/moneyweb-pty-limited-v-media-24-limited-and-others-unknown-topic-agpjhc-2016--6a3ea5173b1caa912980e0e9>

Prepared on 14 October 2026 · Esheria