

SOUTH AFRICA / JUDGMENT

Monkwe v Moima (40629/2007)

[2008] ZAGPHC 327 (17 October 2008)

[2008] ZAGPHC 327**COURT**

High Courts - Gauteng

BEFORE

Botha

CASE / FILE NUMBER

40629/2007

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IN THE HIGH COURT OF

SOUTH AFRICA

(TRANVAAL

PROVINCIAL DIVISION)

DATE: 17 OCTOBER 2008

NOT REPORTABLE

CASE NO: 40629/2007

In

the matter between:

HILDA

NTEBALENG MONKWE PLAINTIFF

vs.

SOLLY

SEGOPAKAMPA MOIMA DEFENDANT

JUDGMENT

BOTH A J:

This is a defamation action.

The plaintiff is Mrs Hilda Ntebaleng Monkwe. She is also known as Ma-Glenda Monkwe. She is a teacher. She is also a branch chairman of the South African Communist Party.

The defendant is Solly Segopakampa Moima, a city councillor for ward 13 of the Tshwane Metropolitan Council.

The case arises out of two articles that appeared in two editions of the Sosh Times, the June-July 2007 edition and the July-August 2007 edition. In both cases the articles were written by Mr Thapelo Masilela.

The first article, under the heading “Invaders pay high price as shacks are demolished” deals with the demolition of shacks erected after an illegal invasion of land.

The following passage appears in this article:

“Meanwhile a war of words has erupted between Ward 13 Councillor Mr Solly Moima and a member of the F4 Concerned Group Hildah “Ms Glenda” Monkwe.

Moima blamed Monkwe for the illegal invasion of land in F4 and said: “It is the work of the counter-revolutionaries in the person of Hildah “Ma-Glenda’Monkwe with her F4 Concerned Group”.

These words are the basis of the plaintiff’s first claim, which is for R100 000.00.

She alleges that the words are defamatory of her in that they are intended to be understood that she is dishonest in the sense that she is a power monger, that she acts contrary to the laws of the country in housing matters and that she is involved in illegal activities.

The second article, under the heading “Residents and Councillor in tug of war” deals with the alleged postponement of work on the provision of water services in the F4 area.

In this article the following passage appears:

“It is not true that the project has been postponed because there is no properly constituted steering committee. It is because Ma-Glenda (Monkwe) and company are hijacking the process in order to place their own people on the steering committee so that only their favourite people must be hired”, said Moima”.

In respect of this article, likewise, it is alleged that it was intended to be understood, and it was understood to mean that the plaintiff was dishonest.

The plaintiff relies on innuendos. I shall later return to the pleaded innuendos.

The defendant denied that he was the source of the articles. He also denied that the articles were defamatory in the sense alleged.

The plaintiff gave evidence and called Mr Thapilo Masilela, the journalist who wrote the articles.

The defendant gave evidence on his own behalf.

The plaintiff testified that she was offended by the articles. She denied that they were true. She denied that she was part of the process of land invasion. She even alerted the defendant to the problem.

She explained how she had to obtain a transfer after the publication of the articles.

On 10 August 2007 members of the community came to her house and toyi-toyed. They accused her of having stopped their water.

She confirmed that she had been suspended as a member of the ANC.

She confirmed that she also aspired to the position now occupied by the defendant, as ward councillor, but denied that she was embittered by his election.

She denied that she took part in violent action when water tanks were burnt.

She agreed that she took part in action to obtain water in F4.

Mr Masilela testified that when he saw people clearing an area with a view to erecting shacks, he went to see the defendant. The defendant told him that it was the result of the activities of the F4 residents' committee. He then approached the persons concerned. The plaintiff indicated her surprise.

The defendant knew that he was a journalist and that he would publish what he was told.

That formed the subject matter of the first article.

The second article was the result of a telephone interview. There was a problem about the delay in the installation of a water system. There were rumours that the plaintiff was responsible. He approached one Theron, who told him that there was a problem with the election of a steering committee. When he telephoned the defendant, the defendant told him that the plaintiff and her people were disrupting the process because she wanted her own people on the steering committee.

After the articles were published the defendant did not approach him. He confirmed that he normally keeps notes and gives persons an opportunity to respond to allegations regarding them.

He conceded that the defendant was not given an opportunity to respond to the contents of the second article.

His first visit to the defendant was in the company of his editor, Mr Moke. It concerned two articles in Sepedi. He gave the defendant a draft of an intended article.

He accepted that he may on one occasion have sent an SMS to the defendant to cancel a meeting.

He denied that he had a close relationship with the plaintiff.

He was referred to two text messages captured on the defendant's cell phone. He confirmed that they were sent by him on 15 September 2007 and 21 September 2007 and that they cancelled meetings that had been arranged. He denied that the meetings were arranged in connection with the two articles.

He was asked to produce the notes he made of the interviews. He only had notes relating to the first article.

He agreed that the plaintiff's name did not appear on page 2 of the bundle of notes, which I shall mark "A". The defendant referred to a group of people led by the plaintiff.

It was pointed out to him that according to the sequence of the pages in his book he interviewed the plaintiff first. He maintained that he interviewed the defendant first.

He agreed that the last paragraph in the first article does not appear in his notes.

He agreed that the names in page 2 of "A" do not appear in the first article.

The article was the product of his mental recollection and his notes.

He agreed that there was no reference to the DA and the PAC in the article.

At the end of the plaintiff's case there was an application for absolution of the instance which I dismissed on the basis that it could not be allowed in view of the test applicable.

The defendant explained how he got the nomination as ward councillor. He referred to the actions of the plaintiff that led to her suspension as member of the ANC.

He denied that he made the statements attributed to him in the articles. He already had problems with Mr Masilela about his reporting.

After the first article he telephoned Mr Masilela. Mr Masilela never came to see him. After the second article he went to see Mr Masilela in his office and told him that he was not happy with the words of the article.

On 10 April 2007 there was a violent protest. He went out early in the morning and saw that the plaintiff was a member of the protesters.

He did not like the word "counter revolutionary" in the first article.

He telephoned Mr Masilela after the first article.

When he arranged a meeting with Mr Masilela, he asked him to effect any possible cancellation by way of SMS. He wanted to have a record.

The Sepedi articles were published in 2006, his first year as councillor.

It was then that Mr Masilela and his editor visited him. Although he was given a draft of an intended article, it was published before he could respond.

He married his wife after Good Friday in 2007. At the time of the violent protest she was still his fiancée. He slept at her house for protection.

He did not consider all the allegations attributed to him as serious. Some were serious, like the allegation that the concerned group were counter revolutionaries. It implied that they blocked amenities.

Eventually he adopted the stance to boycott the Sosh Times. He warned them that he would sue them.

This is only a broad outline of the evidence.

The plaintiff relied on innuendo in respect of both articles.

In respect of the first article it is alleged that the words used by the defendant were understood to mean that the plaintiff was dishonest in the following respects:

that she was a power monger;

that she acted contrary to the law of the land in relation to housing regulations and

that she was involved in illegal activities.

In the case of the second article it is alleged that the words were understood to mean that the plaintiff was dishonest in the following respects:

that she was acting illegally;

that she was engaged in illegal and divisive activities;

that she did not respect the ward councillor, and

that she undermined the authority of the Council and was not trustworthy.

The first question to be decided is whether the defendant did in fact utter the words attributed to him in the articles.

As to whether there were interviews preceding the publication of the articles there is an irreconcilable dispute of fact. This is a dispute that I cannot resolve on credibility.

It is unlikely that Mr Masilela would have published articles in which he attributed statements to the defendant if he had no interviews with him.

On the other hand, Mr Masilela could only produce notes relating to the first article. One would expect a professional journalist to keep notes of interviews.

The long paragraph at the end of the first article does not appear in the notes. Then there are matters in the notes that did not find their way into the article, such as the references to the PAC and the DA. What is not in these notes is any mention that the plaintiff was part of the F4 Concerned Group members who were behind the land invasion.

Even if one can accept that there were interviews with the defendant before the publications, the plaintiff still had to prove what exactly the defendant told Mr Masilela.

One can accept that if the defendant spoke to Mr Masilela, he would have known that his words would be published.

There is no evidence that the defendant was ever given the opportunity to confirm the correctness of the words attributed to him.

In the circumstances one has to depend on the notes or memory of Mr Masilela. It is obvious that where Mr Masilela had no notes, it would be dangerous to rely on his memory. After all, the articles purport to quote ipsissima verba. Where he did make notes, differences between the notes and the words published may raise serious doubt about what precisely was said.

Having said that, I shall refer to the two articles with a view to examine whether one can find, on the probabilities, that the words attributed to the defendant, were uttered by him.

In the first article it is said that the defendant blamed the plaintiff for the land invasion in F4. Then he is quoted as saying:

“It is the work of the counter-revolutionaries in the person of Hildah Ma-Glenda Mankwe with her F4 Concerned Group”. That does not accord with the notes, that do not refer to the plaintiff, and say that the counter-revolutionary forces of F4 are exploiting the matter. These are important difference of nuance and I am not convinced that I can rely with confidence on the rendering of the defendant’s words appearing in the article.

In the case of the second article, where there are no notes, I am even less prepared to accept the version in the article as reliably reflecting the defendant’s words.

There is a more fundamental problem with the plaintiff’s case.

The plaintiff relies on innuendo. No evidence was led regarding the secondary meaning to be assigned to the words used. See *Hassen vs Post News Papers (Pty) Ltd and Others* 1965(3) SA 562W at 566 G-H. Mr Masilela and the defendant were asked in cross-examination about the meaning of the word “counter-revolutionary”. I find it strange that it was used in the context of persons supporting land invasion. Perhaps it has become a term of meaningless invective.

The fact is that in respect of both claims the plaintiff relies on innuendo to prove that the defendant intended to convey and did convey that she was dishonest in certain aspects. As I say, no evidence was adduced to show why in the particular context of the case that meaning was conveyed.

In respect of the first article I fail to see why being a power monger, whatever it is, or being power hungry, denotes dishonesty. In any event the article does not justify the inference that the plaintiff is power hungry. I also fail to see how support for land invasion, even if it is illegal, is a sign of dishonesty.

The article does not suggest surreptitious conduct. It does not even suggest criminal conduct. The illegal conduct suggested, a disregard for housing regulations, can be described as socio-political activism which, however troublesome it may be to a housing authority, can never be regarded as a manifestation of dishonesty.

I also fail to see how one can infer that a person who supports and promotes land invasion can generally be regarded as being involved in illegal activities.

In my view the innuendo cannot be read into the first article. The same applies to the second article.

The fact that someone is hi-jacking a process, apparently the process of constituting a steering committee, cannot sustain an imputation of dishonesty. Clearly “hi-jacking” is used in the metaphorical sense. Nor can divisive activities be considered to be indicative of dishonesty. The words relied upon do not justify an inference that the plaintiff is engaged in illegal activities. The fact that she does not respect the ward councillor, if it can be inferred from the article, does not signify dishonesty.

The words relied upon do not justify the inference that the plaintiff is not trustworthy. The fact that she undermines the council is not a trait of dishonesty.

For all these reasons I am of the view that the two claims cannot succeed.

The plaintiff’s claims are dismissed with costs.

C. BOTHA

JUDGE OF THE HIGH COURT

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Prepared on 11 October 2026 · Esheria