

SOUTH AFRICA / JUDGMENT

Nelson Mandela University and Another v Diale (Reasons) (10638/2023) [2024] ZALMPPHC 176 (13 November 2024) [2024] ZALMPPHC 176

COURT

Limpopo High Court, Polokwane

BEFORE

M Bresler

CASE / FILE NUMBER

10638/2023

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REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA

LIMPOPO DIVISION, POLOKWANE

CASE NO: 10638/2023

(1) REPORTABLE: YES/NO

(2) OF INTEREST TO THE JUDGES: YES/NO

(3) REVISED

DATE: 13 November 2024

SIGNATURE:

In the matter between:

NELSON MANDELA UNIVERSITY (“NMU”) FIRST APPLICANT DR. SIBONGILE MUTHWA
SECOND APPLICANT -and- ISAAC MATOMELA DIALE RESPONDENT

REASONS

FOR JUDGMENT

BRESLER AJ:

Introduction:

- [1] Earlier this morning this court granted final interdictory relief in favour of the Applicant. What follows are the reasons for the said order.
- [2] On the 2nd day of August 2024, this Court granted an interim order with the return date being the 13th of November 2024. This order was granted in the presence of the Respondent.
- [3] The Applicant now applies for a final order in the following terms:
- 3.1 That the Respondent be interdicted and restrained from:
- 3.1.1 making, disseminating or publishing any false, defamatory allegations regarding the Applicants or any of the functionaries or employees of the First Applicant, either directly or indirectly;
- 3.1.2 posting or publishing any information or statements pertaining to the Applicants on, inter alia, X, Twitter, Facebook, HelloPeter or any other social media platform.
- 3.1.3 Communicating directly with:
- (a) The Second applicant.
- (b) Any of the First Applicant's functionaries or employees.
- 3.1.4 addressing any correspondence to the Applicants other than for such purpose as is directly and bona fide related to his academic record at the Applicant.
- 3.2 That the Respondent be ordered to pay the costs of application, such costs to include the costs of counsel in respect of Part A and the costs of two counsel in respect of Part B.
- [4] The Respondent opposed the application, and his opposing affidavit was accordingly delivered on or about the 14th of February
2024. Further documentation and correspondence were delivered by the Respondent, including but not limited to the Supplementary affidavit and Heads of Argument, after the granting of the rule nisi which documentation was duly considered by this Court. The Respondent attended the proceedings in person and extensive submissions were made as to why the interim order should not be made final.
- [5] The Applicants' version is the following:
- 5.1 The Nelson Mandela University (the First Applicant) conducts business as an institute for Higher Education and organ of state in Port Elizabeth. The Second Applicant is the Vice Chancellor of the First Applicant, its most senior executive officer, public representative and torch-bearer.

5.2 The Respondent, a former student of the First Applicant, has engaged in a smear campaign of publishing and distributing abusive and defamatory statements regarding the First Applicant, the Second Applicant, and the office bearers and employees of the First Applicant over an extended period of time.

5.3 It is the Applicants' case that the statements are false and defamatory of the Applicants. It is furthermore submitted that it has the consequence of inciting racial division and instability on the First Applicant's campus.

5.4 According to the Applicants, the Respondent's actions manifested in many ways, including but not limited to the sending of derogatory threats and emails to staff members and defaming the First Applicant. Several examples of these communications were provided to the court as part of the Founding affidavit.

5.5 On the 21st of October 2023, the Respondent opened a criminal case against the First Applicant alleging inter alia that the First Applicant 'sent gangsters to kidnap [him] and steal the devices [he] had on [him]'. In addition, he also contacted a news outlet, 'The Insight Factor' to publish his allegation under the proposed headline: 'Student Opens Case against Racist Landlords'.

5.6 On or about the 22nd of October 2021, the First Applicant served the Respondent with a Notice in terms whereof the Respondent was charged with several instances of misconduct.

5.7 Subsequent hereto, the conduct of the Respondent only escalated. Various harmful, defamatory and threatening statements were made by the Respondent on social media platforms and emails were circulated

by the Respondent to various individuals at the First Applicant, including but not limited to the Second Applicant. Remarks include

the allegation that the Second Applicant is a 'weak leader', a 'weak VC', 'a coward' and an 'Ugly non-progressive Vice Chancellor'.

5.8 The disciplinary hearing continued after the Respondent entered a plea of not guilty. As a result of the hearing the Respondent was suspended until he submitted a psychological assessment report from a private practitioner, confirming that he is mentally fit to return to the First Applicant and to attend to his disciplinary hearing. As no assessment was lodged, the Respondent's enrolment with the First Applicant lapsed at the end of the 2021 academic year.

5.9 During the course of October 2022 to January 2023, the Respondent embarked on a further smear campaign on various social media platforms claiming inter alia:

5.9.1 He was kidnapped, tortured and intimidated by and on behalf of the First Applicant for weeks.

5.9.2 The First Applicant stole his laptop, phone and tablet.

5.9.3 The Second Applicant ignored his 'plight' and issued orders to suspend him without hearings taking place.

5.9.4 Racism by the First Applicant and gangsterism acting in concert with the First Applicant.

5.10 All of these statements were made publicly over the internet and could be and were in fact viewed by thousands of persons around South Africa and globally.

5.11 On or about 2 February 2023, a letter was addressed to the Respondent by the Applicants' attorneys demanding inter alia that the withdraws all the previous adverse statements made by him, that he apologises for publishing false, misleading and defamatory

statements about the First Applicant and that he undertakes not to publish any false, misleading and defamatory statements about the First Applicant.

5.12 On or about the 1st of August 2023, the Respondent confirmed receipt of this letter of demand. He thereafter resumed his campaign of making adverse claims and allegations against the First Respondent. The allegations are in line with the previous attacks to the extent that he persisted in claiming being kidnapped and tortured and that he was suspended without any hearing, all in an elaborate endeavour to cover up the alleged racism prevailing at the First Applicant. Hereafter numerous further comments were left on publicly accessible media platforms.

5.13 On the 9th of October 2023 a further letter was addressed to the Respondent by the attorneys of the Applicants, enquiring as to the address where service will be accepted. This only resulted in the further publication of derogatory statements and threatening email communications aimed at the Second Respondent.

5.14 As a result of the ongoing repetitive, wrongful, unlawful and intentional publication of the abusive communications, both the First and Second Applicant has been damaged in their good name and reputation and are suffering ongoing damages to their reputations.

5.15 After the granting of the order, the Respondent persisted with his actions – numerous e-mails were sent, most of them of a defamatory and threatening nature. The Applicants thus submitted that they are entitled to the relief prayed for.

[6] The Respondent's version is briefly the following:

6.1 He persists with the allegation that he was suspended without a hearing.

6.2 He submits that the statements that he is publishing are not false. He alleges that the Applicants are merely endeavouring to suppress this information, and as a consequence infringing his constitutional rights.

6.3 After being discharged from hospital in June 2023, the Respondent re-applied for admission to finalize his qualification. This was refused. He was not able to provide a medical report as it was expensive, and he was unable to afford the said medical services. In his view this is tantamount to being summarily expelled. He has since been able to consult with a medical professional and a psychological report was made available to the court and the

Applicants.

6.4 The Respondent states that Prof. Jeanine Kruger threatened to change his marks for reasons unknown to him. This increased his distrust in the First Applicant.

6.5 The derogatory and threatening statements in the Respondent's emails were made out of frustration stemming from multiple white racist staff members at the First Applicant constantly threatening to ban him from classes, celebrating and making jokes about his academic exclusion in 2018, coupled with his experience off campus with his Ocatvia Boshoff, being his landlord, and with other racist white landlords in Summerstrand.

6.6 He admits having sent emails to staff members who mocked him when he was academically excluded, and threatened to ban him from classes. He furthermore briefly explained that two male, coloured individuals grabbed him and attempted to put him in the back of a minibus. They failed by managed to steal his bag with his electronic devices.

These devices contained documented evidence on the Applicants hence their endeavour to kidnap the Respondent in broad daylight.

6.7 As the First Applicant has disabled his email services, he does not have access to emails where staff members confessed and apologized for their racial tendencies.

6.8 The Applicants' want to destroy the Respondent's life for calling them out on the racism in and around their campus.

6.9 During the hearing on even date, the Respondent conceded that 'some'

of the statements were indeed derogatory and threatening. He furthermore conceded that he has made remarks in the heat of the moment and because of his ever-present frustration with the Applicants, which statements should not have been made. He

again reiterated that they are prohibiting him from pursuing his chosen career as they are refusing him access to continue his

studies.

6.10 During the hearing this Court highlighted to the Respondent that his frustration with the Applicants is evident from the papers before court. This however does not entitle him to insult and threaten them. Appropriate relief should be pursued by means of a judicial review and / or the internal appeal procedures of the First Applicant. Although the Respondent has shown appreciation for the fact that a person cannot spread false and / or derogatory remarks, he remained adamant that his version is the truth and that the truth needs to be told to warn the

general public of the dangers of attending the First Applicant.

[7] It stands to be noted that the Respondent was presumably

unrepresented when he compiled the affidavit and to this date he remains unrepresented. At the previous hearing he was invited

to obtain legal representation, and the Court went so far as to call upon a notable and well-known senior practitioner in court, to assist him during the hearing. Today, the Respondent was still unrepresented. When invited to obtain legal representation, he first indicated that he requires the services of an attorney and then opted to continue representing himself.

[8] Be that as it may, his affidavit is riddled with hearsay and very little of substance has been conveyed as to the alleged truth of the statements published by him. Today again, he persisted in his view that the information conveyed by him was the truth. This, however, do not explain the repeated insults and threats that was voiced against the Applicants. These comments and remarks are inexcusable and by no means can be seen as the 'truth' or 'in public interest'.

[9] Of particular importance is the statements made by the Respondent that:

9.1 'the derogatory and threatening statements in the emails were made out of frustration...'

9.2 '[he]...vented about the racism internalized at NMU...'

9.3 '... a string of emails from myself composed and send while frustrated and under the influence of alcohol.'

[10] It is common cause between the parties that the Respondent did convey

the information complained about and that publication took place. It is furthermore common cause that the Respondent had the intent to injure the reputation of the First and Second Applicant.

[11] The Applicants need to show that the publication of the statements was wrongful. The Respondent may dispel wrongfulness by proving either truthfulness or public interest[1].

[12] Having regard to the Answering affidavit delivered by the Respondent and the further submissions made in court, the Respondent has failed to prove, on a balance of probabilities, that the statements are either the truth, or in public interest.

[13] In *Khumalo and Others v Holomisa*[2] the Constitutional Court stated that:

'...law of defamation seeks to protect the legitimate interest individuals have in their reputation. To this end, therefore, it is one of the aspects of our law which supports the protection of the value of human dignity'.

[14] In *Le Roux v Dey*[3] the requirements for a successful defamation action were stated to be the following:

[84] ... In *Khumalo and Others v Holomisa* this court stated that the elements of defamation are '(a) the wrongful and

(b) intentional (c) publication of (d) a defamatory statement (e) concerning the plaintiff'.

[85] Yet the plaintiff does not have to establish every one of these elements to proceed. All the plaintiff has to prove at the outset is the publication of defamatory matter concerning himself or herself. Once the plaintiff has accomplished this, it is presumed that the statement was both wrongful and intentional. A defendant wishing to avoid liability for defamation must then raise a defence which excludes either wrongfulness or intent. Until recently there was doubt as to the exact nature of the onus. But it is now settled that the onus on the defendant to rebut one or the other presumption is not only a duty to adduce evidence, but a full onus, that is, it must be discharged on a preponderance of probabilities. A bare denial by the defendant will therefore not be enough. Facts must be pleaded and proved that will be sufficient to establish a defence.'

[15] In as far as the Respondent does not deny that the statements were made, and more specifically that they were made with the intention to cause harm to the reputation of the First and Second Applicant, this Court is satisfied that the Applicants have met the requirements for final interdictory relief.

[16] It is quite evident that the Respondent fails to appreciate the error

of his ways. The issue before court does not concern the lawfulness of the termination of his studies with the Applicant.

This must be addressed through the appropriate forum. The only issue that the court must determine is if the final interdictory

relief should be granted. Those requirements have been met.

[17] The judiciary is expected to uphold the Laws of South Africa without fear of favour. The Respondent has endeavoured to influence the decision of this Court by means of repeated threats both prior to the hearing of the matter and thereafter. The Respondent will be well advised to reconsider his approach. Justice cannot be enforced by fear or intimidation.

[18] As a consequence of the aforesaid, the order set out herein after was granted subsequent to the hearing of the matter.

Order:

[19] In the result the following order is made:

19.1 The interim order granted on the 2nd day of August 2024 is hereby made final.

19.2 The respondent is interdicted and restrained from:

19.1.1 making, disseminating or publishing any false, defamatory allegations regarding the Applicants or any of the functionaries or employees of the First Applicant, either directly or indirectly;

19.1.2 posting or publishing any false or defamatory information or statements pertaining to the Applicants on, inter alia, X, Twitter, Facebook, HelloPeter or any other social media platform.

19.1.3 Communicating directly with:

(b) Any of the First Applicant's functionaries or employees save in respect of communication as contemplated in prayer 19.1.4.

19.1.4 addressing any correspondence to the Applicants other than for such purpose as is directly and bona fide related to his academic record at the Applicant.

19.2 The Respondent is ordered to pay the costs of application, such costs to include the costs of two counsel where so employed on Scale B.

M BRESLER

ACTING JUDGE OF THE HIGH COURT,

LIMPOPO DIVISION, POLOKWANE

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November 2024

[1] Neethling v Du Preez; Neethling v The Weekly Mail

[1993] ZASCA 203; 1994 (1) SA 708 (A) and National Media Limited v Bogoshi 1998 (4) SA 1196
(SCA)

[2] 2002 (5) SA 401 (CC)

[3] 2011 (3) SA 274 (CC) at 84

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