

SOUTH AFRICA / JUDGMENT

Rossouw v Mogorotsi and Another (HCA30/2019) [2022] ZALMPPHC 42 (10 August 2022) [2022] ZALMPPHC 42

COURT

Limpopo High Court, Polokwane

BEFORE

Kganyago, Muller

CASE / FILE NUMBER

HCA30/2019

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REPUBLIC
OF SOUTH AFRICA
IN
THE HIGH COURT OF SOUTH AFRICA
LIMPOPO
DIVISION, POLOKWANE
CASE
NO: HCA30/2019

REPORTABLE: YES/NO
OF
INTEREST TO OTHER JUDGES: YES/NO
REVISED.
In

the matter between: VINCENT
ANDRIES ROSSOUW
APPELLANT
And
RAPULA
LUCKY MOGOROTSI
FIRST
RESPONDENT
ISAAC
PHETO
SECOND
RESPONDENT

JUDGMENT

KGANYAGO J

- [1] The appellant who was the plaintiff in the court a quo, had instituted an action against the respondents who were first and second defendants in the court a quo. The appellant's claim is based on alleged malicious prosecution. It is alleged that the respondents have laid a false complaint of crimen iniuria and pointing of a firearm against the plaintiff with the South African Police Services (SAPS). The appellant was prosecuted and acquitted on all the charges. The respondents have defended the appellant's claim and have also filed counterclaims against the appellant for crimen iniuria. The appellant's claim and the second respondent's counterclaim were dismissed. The first respondent (first defendant in the court a quo) succeeded with his counterclaim and the appellant was ordered to pay him R65 000.00 for having humiliated and impaired the first respondent's dignity.
- [2] The appellant is appealing against the whole judgment and order of the court a quo. The second respondent (second defendant in the court a quo) did not appeal against the dismissal of his counterclaim.
- [3] The appellant in the court a quo has testified as follows. That on 1st September 2016 he was the deputy sheriff for four and half years. As deputy sheriff it was legal for him to carry a firearm. The relationship between the sheriff's office and Thabazimbi Municipality was not that good, as they had encountered some struggles with the municipality especially with the attachments and removals. That the office of the sheriff had received the threats from the employees of the municipality when they removed all the furniture of the municipality on 25th August 2016.
- [4] On 1st September 2016 just before 13h00 he closed the security gate to prevent people from entering the sheriff's office during lunch time which is between 13h00 and 14h00. That there is a painted sign on the wall next to the gate stating that lunch is between 13h00 and 14h00. After he had locked the gate he went into the house. On entering the house, the previous domestic worker told him that she was going out for lunch. He accompanied their domestic worker up to their principal gate, where he unlocked it to let her out. After that he did not lock the gate, but put on the padlock so that it does not open. He went back into the house and sat in his room which was facing the driveway.
- [5] At about 13h30 as he was sitting in his room, he heard a rattle at their front gate as if someone was trying to open the gate. He stood up, looked through the window and saw the respondents entering the premises. He and his sister were the only people in the house at that time. With the threat that they have received from the municipality a couple of days before, he ran out of the house to prevent the respondents from entering the house. He thought that they have come to attack them. He found the respondents on the security gate that separate the sheriff's office and the house. That gate they leave it open during lunch time to enable the dogs to move freely in the yard from the house to the offices. However,

during office hours that gate is locked for the dogs to remain in the main house.

- [6] On arrival at the security gate, the appellant told the respondents that they were not supposed to be in the yard and that they should move out. The respondents told the appellant that he was not treating them with humanity. The appellant gently forced the respondents out of the yard, but they did not listen. As the appellant was trying to take the respondents out of the yard, one of his dogs tried to bite the first respondent and he (witness) stopped it. The appellant accompanied the respondents until the front gate, and on arrival at the gate he told the respondents to go out of the yard, but they refused. The appellant then gently pushed the respondents out of the yard and closed the gate. The whole time the respondents were telling the appellant that he was treating them in an inhuman way. The appellant asked the respondents why they were at the sheriff's offices, but they refused to tell him.
- [7] Whilst the respondents were outside the yard, they were arguing with the appellant. The respondents even asked the appellant to give them the sheriff's phone number, so that they can call the sheriff (appellant's father) and tell him how the appellant had treated them. The respondents wanted the appellant's father to teach him a lesson. The appellant stated that the second respondent has been at the sheriff's office on several occasions and he knows how the procedure works at the sheriff's office.
- [8] The appellant's sister and one staff member arrived at the main gate where the argument between the appellant and the respondents was still continuing. The respondents told the appellant's sister that the appellant was treating them in an inhuman way. The respondents requested the appellant's sister to give them the sheriff's number and the full details of the appellant. The appellant's sister gave the respondents the information they were seeking. After that the appellant walked away from the respondents and left his sister with them.
- [9] As the appellant was walking away, he heard the respondents screaming to his sister and he turned back to the gate. On arrival at the gate the appellant tried to talk to the respondents, but the respondents were arguing like crazy people and the respondents started opening the gate. The respondents started taunting the appellant, and that ticked off the appellant and he started chasing the respondents. The appellant could not remember the exact words that the respondents said which ticked him off. The appellant ran past the second respondent and chased the first respondent as he was the main instigator. The appellant chased the respondents a couple of meters until the other side of the yard and he stopped. By that time the first respondent was laughing at him whilst the second respondent was standing next to the gate.
- [10] The first respondent continued laughing at the appellant, and the appellant went back to first respondent and continued chasing him down the street for about three houses down the street. The whole time the second respondent was behind the appellant. The appellant stopped chasing the first respondent and walked back towards the second respondent. As the appellant was walking towards the second respondent, the first respondent was

screaming at the second respondent to use his phone and take the video as the appellant had assaulted him. The appellant denied that he had assaulted the first respondent. When the appellant walked past the second respondent, he told the second respondent not to come back to the offices. According to the appellant, he received a call from his father telling him that the first respondent was going to lay a criminal case against him.

- [11] Later in the afternoon the appellant received an email from the first appellant and other employees of the municipality and the first appellant's union, stating that the appellant had pointed the first respondent with a firearm, treated him inhumanly, and also called the first respondent with the ugly words which the appellant was not going to repeat them. The appellant denied pointing the first respondent with a firearm. Thereafter the first respondent laid a criminal case against the appellant and he was arrested. At the police station the appellant was told that it was only the first respondent who had laid a criminal case of pointing with a firearm and crimen injuria against him. The appellant appeared in court about nine times, and he was found not guilty and discharged in terms of section 174 of the Criminal Procedure Act.
- [12] The appellant was cross examined and he conceded that it was only the first respondent who had opened a criminal case against him. The appellant also conceded that when he was at the police station there was only one charge laid against him. The appellant stated that he had chased the first respondent from the sheriff's office, as the first respondent was the instigator of making threats to him, and also laughing at him. The appellant also stated that he was shocked by the first respondent's actions, and his instinct when he got shocked was to protect his father, protect what was dear to him, and at that time their property was open including their house. The appellant further stated that when the respondents refused to go outside the yard, he forced them to go out of the premises. The appellant disputed that he had called the first respondent klein kaffir. That concluded the appellant's evidence and he closed his case.
- [13] The first respondent took the witness stand and testified under oath. He testified that he is a union representative of IMATU, and that he has been allocated an office which is within Thabazimbi Local Municipality. In that office he has been allocated a laptop and printer for office use for union activities. That most of the time he will be out of office. During 2016 the assets of the municipality were attached by sheriff of the court. It happened that the sheriff attached the printer which was not the asset of the municipality. His colleagues informed him that the sheriff had told them that he can come to sheriff's office to enquire how he can claim the printer back.
- [14] The first respondent notified the second respondent who was the chairperson about what had transpired to the printer. The first respondent requested the second respondent to accompany him to the sheriff's office at about 13h00. They arrived at the sheriff's office at about 13h40, and found the gate open. They entered through the gate and walked towards the offices. They walked until the office door and stood in front of the door. As they were standing there, an African lady who seems to be a domestic worker came from the direction

of the house. They greeted that lady and told her that they were there to see the sheriff. Before that lady could respond to them, the appellant came and instructed that lady to go back into the house, and the lady obliged.

- [15] The appellant started shouting at the respondents and telling them to get out of the premises. The respondents walked in a reverse way until the gate whilst asking the appellant why he was treating them like that. They went out of the premises and the appellant closed the gate. When they were outside the premises, the first respondent asked the appellant why he was treating them like that, and not asking them why they were there at the premises. The appellant told them that they were trespassing and they must go away. The first respondent pleaded with the appellant to listen to them before they could go away, but the appellant shouted at them, telling them to go away as they were trespassing.
- [16] As the appellant was shouting at them loudly, a certain white lady came and asked what was happening. The first respondent told that lady that they were there to see the sheriff to enquire about the printer. As the first respondent was explaining to that white lady, the appellant continued shouting and telling them that they were trespassing. That lady told them that the sheriff was not there, but that it was the sheriff son (appellant). That lady told them that the appellant was the deputy sheriff. The first respondent requested that lady to furnish him with the telephone numbers of the sheriff so that he phone him and explain to him what his son did to them.
- [17] That lady gave the first respondent the sheriff's numbers, and after that the first respondent requested the names of the appellant. By then the appellant was still shouting and telling the respondents to go away. The appellant jumped over the fence as the gate was locked and went towards the respondents. When the respondents saw that the appellant had jumped over the fence and was coming towards them, they ran away and took separate ways. The first respondent ran towards the main road. The first respondent denied that he was laughing at the appellant during the time he was running away. The first respondent stated that it was not possible for him to laugh as he felt threatened and was running for his life. The first respondent further stated that he felt threatened as he saw that the appellant was in possession of a firearm when he jumped over the fence. He did not know what the appellant was going to do with the firearm, and that is the reason why he ran away.
- [18] As the first respondent was running away, he could hear the appellant's foot steps behind him. The appellant stopped chasing the first respondent and uttered the following words: "ek sal jou kry jou klein kaffir." He felt so humiliated and degraded by being called a klein kaffir. The first respondent stated that he was 44 years of age and that when the appellant testified he had stated that he was 27 years of age. The first respondent stated that when he stopped running, he looked back and saw the appellant putting his firearm back into the pouch. That the situation was so frightening and also in that era to be called a klein kaffer whilst been chased on the street was not right.

- [19] The first respondent stated that he saw the appellant walking towards the sheriff's office, and the second respondent was next to the sheriff's office. The first respondent called the second respondent to be careful as the appellant was having a firearm, and that the second respondent must join him so that they can go to the police station. The appellant walked past the second respondent and the second respondent joined the first respondent. Thereafter the respondents boarded the second respondent's vehicle and drove straight to the police station.
- [20] On arrival at the police station the first respondent explained to the police officer who was in the front desk as to what had happened. That police officer told the first respondent that he must go and speak to the appellant and that he will not open a docket. The first respondent told that police officer that he was afraid to go back to the sheriff's office and that is when the police officer called the detective to assist the first respondent. After that the first respondent made a written statement to the police. The first respondent also wrote an email to the sheriff and in that email explained everything that had happened. He also explained to the sheriff that he was humiliated when he was called a klein kaffir, and that he was considering opening a criminal case against the appellant.
- [21] The appellant was criminally charged, he appeared in court and was found not guilty and discharged in terms of section 174. During 2017 the first respondent received summons from the appellant who had instituted the current action against him. That is when the first respondent learned that the appellant had been found not guilty and discharged in terms of section
174. That when he laid the charges against the appellant he was frightened and had a reasonable believe that an injustice had been done to him. He did not have any malicious intent against the appellant. On that particular date it was for the first time he met the appellant.
- [22] The first respondent was cross examined and he stated that prior to the incident he did not have any problems with the sheriff, and that he did not know whether the municipality had problems with the sheriff. The first respondent conceded that he was aware that the sheriff had attached the assets of the municipality. The first respondent stated that when the sheriff attached the property of the union, he was not angry because he knew that one had to follow certain procedures in order to claim back the printer. When asked whether he did not think that it was lunch time when he found the gate closed, and there was nobody there, he responded by saying that if one goes to the offices during lunch time, they are not chased away but told to wait. The first respondent conceded that he did not see the appellant pointing him with a firearm, but that he saw the appellant putting the firearm back into the pouch when chasing him.
- [23] The first respondent stated that in his statement to the police he had stated that the appellant was chasing him with a firearm and when he looked back he saw the appellant putting that firearm back into the pouch. When it was put to the first respondent that in his written police statement he had stated that the appellant jumped the gate and took out a

firearm from his waist and had held it pointing it at them and they ran away, the first respondent responded by stating that it not different from what he had told the court. Further that to him when the appellant jumped the gate he took out his firearm and chased them with that firearm.

- [24] When asked why the appellant was charged with two counts of pointing with a firearm and two counts of crimen injuria if the second respondent was his witness, the first respondent stated that it was for the prosecution to answer that, as they are the ones who have formulated the charges. The first respondent stated that in his statement to the police he had stated that the appellant had called him a klein kaffir, has chased him with a gun, and that the second respondent was there and he saw and heard everything.
- [25] The second respondent testified that on 1st September 2016 around lunch time he got a call from the first respondent requesting him to accompany the first respondent to the sheriff's office in order to enquire on how they can get back the union's printer. When they arrive at the sheriff's office they found the gate open, and they proceeded straight to the office. When they approach the office, they saw that it was closed. They saw a lady ironing clothes, and they waived at her and asked her how they can get hold of the sheriff. Whilst the lady was walking towards them, a white male came from behind that lady and told them to go back as they were not supposed to be there.
- [26] They pleaded with that white male to listen to them, but that white male told them to go away. That the white male was the appellant. There were dogs which were following the appellant and they started barking. When the dogs started barking the appellant told them that even the dogs will bite them. The appellant started pushing them out of the yard and they were walking towards the gate in reverse. When they arrive at the gate they told the appellant that they wanted to talk to the sheriff, and the appellant told them that they were not supposed to be there. The appellant closed the gate and told them that the gate was closed and they were not supposed to be there.
- [27] The second respondent started arguing with the appellant telling him that he had just closed the gate. The appellant told the second respondent that the gate was closed, and he locked it. As they were arguing, the appellant's sister came to the gate and talked to them politely. The appellant's sister told them that the appellant was the deputy sheriff. They told the appellant's sister that they wanted to ask the sheriff if their printer was not at the sheriff's office. The sheriff's sister told them that the sheriff was not there. That is when the first respondent asked the sheriff's phone numbers from the appellant's sister and also asked her as to how they could get hold of the sheriff. After the appellant's sister had given them the sheriff's phone numbers, and whilst still talking to the appellant's sister, the appellant jumped over the gate showing that he was now fighting. They then moved backwards and run away going separate ways. The second respondent ran up to the mayor's house which is next to the sheriff's office.

- [28] The appellant was running after the first respondent. The appellant could not catch the first respondent, and the appellant took out his firearm but quickly put it back. The appellant stopped chasing the first respondent, and the first respondent also stopped running and started laughing and he does not know why the first respondent was laughing. Then the second respondent heard the appellant saying “jou klein kaffir, ek gaan hulle kry jou klein kaffir.” The appellant then decided to go back to the sheriff’s office. As the appellant was walking back to the sheriff’s office, the first respondent told the second respondent to be careful as the appellant was in possession of a firearm. The appellant walked past the second respondent and went back to the sheriff’s office.
- [29] After that the respondents went to the police station to open a criminal case against the appellant. The second respondent stated that he was not the complainant but the witness of the first respondent. That he was not present when the charge against the appellant was drawn, and that at the criminal trial he had testified as a witness. That he does not know how the criminal matters works, and could not tell whether he was the complainant, but that at the criminal trial he was called as a witness. He denied that he had told the investigating officer that he was pointed with a firearm, and further that the appellant could not have pointed him with a firearm as he not chasing him. That he took it that he was called a little kaffir as he was also involved with the first respondent in that scenario. That he was seriously affected by the whole incident, and his dignity was impaired as he did not expect that from the sheriff’s office. He was employed as a traffic officer since 2007 and has been working with both black and white officers.
- [30] The second respondent was cross examined and he stated that he did not know what charge was the appellant facing and also did not draft the charge sheet. He stood by his earlier statement that the appellant could not have pointed him with a firearm as he was not chasing him. The second respondent stated that the person who wrote his statement that the appellant had pointed him with a firearm will have to explain that as that is not what he had told him. The second respondent stated that he had told the police officer who took his statement that the appellant chased them and took out a firearm. The second respondent stated that the appellant had pulled out his firearm before he stopped chasing the first respondent.
- [31] The second respondent stated that the appellant referred to the first respondent as a klein kaffir as there was a quarrel. The second respondent conceded that the appellant did not chase him or try to catch him. It was put to the second respondent that the appellant had chased the first respondent as the first respondent was tempting and victimizing the appellant.

[32] It is trite that the requirements for a plaintiff to succeed with a claim for malicious prosecution, are that he/she must allege and prove that the defendants have (i) set the law in motion, ie instigated or instituted the proceedings; (ii) acted without reasonable and probable cause; (iii) acted with malice (or animus iniuriandi) that is the intention to injure the plaintiff; and (iv) that the prosecution has failed.

[33] In *Reylant Trading (Pty) Ltd v Shongwe*[1] Malan AJA said:

*“The requirement for malicious arrest and prosecution that the arrest and prosecution be instituted ‘in the absence of reasonable and probable cause’ was explained in *Beckenstrater v Rottecher and Theunissen* as follows:*

‘When it is alleged that the defendant had no reasonable cause for prosecuting, I understand this to mean that he did not have such

information as would lead a reasonable man to conclude that the plaintiff had probably been guilty of the offence charged; if despite

his having such information, the defendant is shown not to have believed in the plaintiff’s guilt, a subjective element comes

into play and disproves the existence, for the defendant, of a reasonable and probable cause.’

It follows that a defendant will not be liable if he or she held a genuine belief founded on reasonable grounds in the plaintiff’s guilt. Where a reasonable and probable cause for an arrest or prosecution exists the conduct of the defendant instigating it is not wrongful. The requirements of reasonableness and probable cause is a sensible one: ‘For it is of importance to the community that the persons who have reasonable and probable cause for the prosecution should not be deterred from setting the criminal law in motion against those whom they believe to have committed offences, even if in so doing they are actuated by indirect and improper motives.’

[34] The appellant has managed to prove the first and fourth requirements, what must also be determined is whether the second and third requirements have been met. In *C v C and Others*[2] Cachalia JA said:

“[39] Reasonable and probable cause means an honest belief founded on reasonable grounds that the prosecution was justified. This imports both an objective element (reasonable grounds) and a subjective element (honest belief). Animus iniuriandi in this sense means that the defendant, aware that no reasonable grounds for the prosecution exist, nonetheless initiates the proceedings. If reasonable grounds are absent but defendant honestly believes that the plaintiff is guilty or that there are reasonable

grounds, wrongfulness is lacking. This would occur in the event of a mistake on the part of the defendant.

- [40] The onus to prove these requirements rest on the plaintiff. Where the defendant is proved to have initiated a prosecution without reasonable grounds, it does not follow that she acted dishonestly, nor does it necessarily imply that she did so *animo iniuriandi*. However, in the absence of any other evidence the natural inference is that the plaintiff has established both. The defendant thus bears the evidential burden to rebut this inference regarding her state of mind, including any mistake that would exclude her liability.”
- [35] It is not in dispute that on 1st September 2016 the respondents were at the sheriff’s office during lunch time. Whilst the respondents were at the sheriff’s office, an arguments ensued between the respondents and the appellant regarding their presence at the sheriff’s office during lunch time when the office was closed. That argument became heated to the extent that the appellant had to chase the first respondent down the street. According to the appellant he chased the first respondent down the street as the first respondent persisted to provoke and taunt him. The appellant saw the first respondent as the main instigator.
- [36] When calm was restored, the first respondent opened a criminal case against the appellant on the same date of the incident. The first respondent in his written statement to the police has stated that whilst they were at the gate, the appellant took out a firearm and pointed them with it and they ran away. The appellant followed them as they were running away and in the process told the first respondent that “I will find you klein kaffir.”
- [37] The second respondent in his written statement to the police has stated that as they were arguing with the appellant at the gate, the appellant jumped over the gate and they ran away in different directions. The appellant ran after the first respondent, and in the process of chasing the first respondent took out a firearm and pointed it at them, but no shot was made. Thereafter the appellant uttered the following words to the first respondent: “I will get you klein kaffir.”
- [38] The following day the first respondent wrote an email to the sheriff relating to the sheriff what transpired the previous day. In that email the first respondent has stated that the appellant has told them that they must go away as they were trespassing. Thereafter the appellant jumped over the gate pulled out his pistol, and they ran away taking different directions. As the appellant was chasing the first respondent he said: “ek sal you kry klein kaffir.” The first respondent notified the sheriff that they have opened a criminal case against the appellant, and that they intend taking legal action against the appellant for *crimen injuria*.
- [39] The appellant in his warning statement has stated that he will give his statement through his attorney. In his written statement through his attorney, the appellant has stated that the first respondent had persisted to provoke and taunt him. As a result of that the appellant opened the gate and chased the first respondent down the street. That the chase ended when the first respondent laughed at the appellant and shouting to other people to look and witness the appellant hitting at him. The appellant denied hitting or pointing at the first respondent with a firearm.

- [40] The respondents in their written statements to the police have contradicted each other as to when the appellant allegedly pointed the first respondent with a firearm. The email addressed to the sheriff by the first respondent also contradict the respondents written statements to the police. However, with the written statement of the second respondent, he has stated that they ran away and took different directions, and the appellant ran after the first respondent. Thereafter the appellant took out a firearm and pointed it at them. The question is if the respondents have taken different directions, how was it possible for the appellant to have pointed them with a firearm at the same time. The police officer who was taking the respondents' written statements might have not captured the respondents' narration of the events correctly. The prosecutor who drafted the charge sheet did not engage this impossibility before drafting the charge sheet.
- [41] The respondents in court disputed having told the police officer who took their statements that they have told him that the appellant had pointed the first respondent with a firearm. In my view, the issue of the firearm has been clarified by the first respondent in his email to the sheriff. In that email the first respondent is merely stating that the appellant had pulled out a firearm. In court he testified that he saw the appellant putting back the firearm back into the holster. In the email addressed to the sheriff, the first respondent seems to be pursuing the alleged crimen injuria only. The police statement even though was read back to the first respondent, was not written by him. However, the email was written by the first respondent himself, and in my view, is more credible than the police statement, as when he wrote that email he had more time to reflect on it.
- [42] The purpose of the written statement to the police is to obtain the details of an offence, so that it could be decided whether a prosecution should be instituted against the suspect. (See *S v Bruiners and Another*[3]). In other words' the written police statement is the basis for the police to investigate the complaint by the complainant, and thereafter be able to form a reasonable suspicion whether to arrest the suspect or not. When investigations are complete, the docket will be handed over to the prosecuting authority to determine whether the accused should be prosecuted. Should the prosecution decide to prosecute the accused, it is up to the prosecution which charges to formulate against the accused, and the complainant plays no role in that process.
- [43] According to the appellant's version he was inside the yard with the gate closed and locked when he was taunted and provoked by the first respondent. That led him to unlock the gate, get out of the yard and gave chase to the first respondent. The appellant was safe in the yard with the gate locked. He could not have unlocked the gate and decided to give chase to the first respondent just for fun. That shows that he was pushed to the limit and was so angry with the first respondent and just wanted to have him in his hands and deal with him accordingly. However, he could not catch the first respondent and that could have frustrated him, and ended up uttering the words as testified by the respondents to the first respondent.

- [44] There was a basis for the respondents to have laid a complaint with the police. After that it was up to the police to investigate the complaint, and when they were satisfied with their investigations, to present the docket to prosecution to decide whether to prosecute or not, and which charges to formulate against the appellant. It is trite that the offence of assault can be committed even where there is no physical harm, but where there is a threat of immediate personal violence in circumstances that lead the person threatened reasonably to believe that the other intends and has the power immediately to carry out the threat. (See *R v Gondo*[4]). The first respondent has testified that he ran for his life as he felt threatened by the appellant who was having a firearm when the appellant jumped over the gate, and did not know what the appellant was going to do with the firearm. The first respondent believed that the appellant was going to harm him, hence he ran for his life. The appellant himself testified that he unlocked the gate and gave chase on the first respondent. By getting out of the locked yard and giving chase to the first respondent whilst angry, the appellant's actions constituted immediate personal violence on the first respondent.
- [45] From the appellant's own version in his police statement, a charge of assault could have also been formulated against the appellant. There was therefore a reasonable and probable cause for an arrest and prosecution of the appellant. It was up to the prosecution how they formulate a charge which they think will be sustained in court, and the respondents were not involved in that. It can therefore not be said that the first respondent has acted without reasonable and probable cause, and with malice when he opened a criminal case against the appellant. The second respondent was not a complainant but a witness of the first respondent.
- [46] The first respondent was 44 years old whilst the appellant was 27 years' old. The appellant was 17 years younger than the first respondent. The word "kaffir" has racial connotations and it belongs in the past, and had the potential to open old wounds of the past. It was most degrading and humiliating to be referred to as young kaffir and also by a person 17 years younger to the first respondent. I do not find any reason to fault the judgment and order of the court a quo. The appeal therefore stands to fail.

[47] In the result I make the following order:

47.1 The appeal is dismissed with costs

JUDGE OF THE HIGH COURT OF SOUTH

AFRICA, LIMPOPO DIVISION, POLOKWANE

I AGREE

MULLER J

AFRICA, LIMPOPO DIVISION,

POLOKWANE

APPEARANCES: Counsel for the appellant : Adv AC Diamond Instructed by : Gerrie Raubenheimer attorneys Counsel for the respondents : Adv K Mokwena Instructed by : SJ Pienaar attorneys Date heard : 22nd July 2022 Electronically circulated on : 10th August 2022

[1] [2006] ZASCA 162; [2007] 1 AII SA 375 (SCA) (26 September 2006) at para 14

[2] [2021] ZASCA 12 (3 February 2021) at paras 39 and 40

[3] 1998

(2) SACR 432 (C)

[4] 1970

(2) SA 306 (R)

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