

SOUTH AFRICA / JUDGMENT

Strydom v Harman (UM123/2022)

[2023] ZANWHC 70 (8 June 2023)

[2023] ZANWHC 70**COURT**

North West High Court, Mafikeng

BEFORE

J T Djaje

CASE / FILE NUMBER

UM123/2022

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IN THE HIGH COURT OF
SOUTH AFRICA
NORTH WEST DIVISION,
MAHIKENG
CASE
NO: UM123/2022

Reportable:

YES / NO
Circulate
to Judges: YES / NO
Circulate
to Magistrates: YES / NO
Circulate
to Regional Magistrates: YES / NO
In

the matter between:

PIETER
HENDRICK STRYDOM
APPLICANT
And
FRANCOIS
JURIE NICOLAAS (COIS) HARMAN
RESPONDENT

Heard:

13 MARCH 2023

Delivered: This judgment is handed down electronically by circulation to the parties through their legal representatives' email addresses.
The date for the hand-down is deemed to be on 08 JUNE 2023.

ORDER

The following order was made

"1. THAT:
Paragraphs 3 and 4 of the Order of

this Court dated 1 JULY 2022 is confirmed as follows:

(3)
The Respondent is ordered, forthwith upon service of this order on him, to furnish a complete list ("the list") to the Applicant's attorney of record wherein the Respondent discloses the full names, addresses and contact details of each and every person / institution with whom / which he shared, or to whom he spent or made available by any means, any of the media referred in paragraph 2 of the Order dated 1 JULY 2022, of and concerning the Applicant, his firm, his employees or any other party who engages with, associates with or conducts business with the Applicant;

(4)
The list referred to in the preceding paragraph must be accompanied by an affidavit deposed to by the Respondent wherein he confirms: -

(4.1)
that the list is complete and accurate in all respects;

(4.2)
That it represents a true and accurate reflection of all the individuals and institutions with whom the Respondent shared, or to whom he sent or made available by any means, any of the media referred to in prayer 1 above of and concerning the Applicant, his firm, his employees or any other party who engages with, associates with or conducts business with the Applicant;

2. THAT:
The Respondent is ordered to pay the costs of the application on the scale as between attorney and own client;

THAT:
if reasons for the order are required, same should be requested within 10 days of this order."

JUDGMENT

- [1] This matter first came as an urgent ex parte application on 1 July 2022 and the following order was granted:

“1. THAT: This application be heard in camera, on extremely urgent basis, and that the applicant’s failure to comply with the ordinary rules related to time periods and service of the application, as well as the applicant’s failure to comply with the practice directives that govern the ordinary enrolment of urgent applications be condoned in terms of Rule 6(12).

2. THAT: The respondent be ordered, forthwith, and within one hour of service of a Court Order on the respondent by sheriff and/or email and/or personally messenger of the applicant or his representative, to remove any and all media (“the media”), in any format whatsoever on any platform, whether electronic, virtual or otherwise, which has been authored, disseminated and/or made publicly available by the respondent or on the respondent’s behalf or on the respondent’s instruction, of and concerning the applicant, his firm, his employees or any other party who engages with, associates with or conducts business with the applicant, from all public domains, irrespective of the nature of the public domain (i.e in print or virtual);
 3. THAT: the respondent be ordered, within fourteen days of service of an order on him granted pursuant to this application, to furnish a complete list (“the list”) to the applicant’s attorney of record at the address stipulated below, wherein the respondent discloses the full names, address and contact details of each and every person/ institution with whom/ which he shared, or to whom he sent or made available by any means, any of the media referred in the preceding prayer, of and concerning the applicant, his firm, his employees or any other party who engages with, associates with or conducts business with the applicant.
 4. THAT: The list referred to in the preceding paragraph be accompanied by an affidavit deposed to by the respondent wherein he confirms:
 - 4.1 The list is complete and accurate in all respects;
 - 4.2 It represents true and accurate reflection of all the individuals and institutions with whom the respondent shared, or to whom he sent or made available by any means, any of the media referred to in prayer 1 above of and concerning the applicant, his firm, his employees or any other party who engages with, associates with or conducts business with the applicant.
 5. THAT: Costs in the application.”
- [2] In terms of the above order two interim interdicts were granted and the applicant now seek confirmation thereof. On the hearing of the matter the following order was granted:

2. THAT: The Respondent is ordered to pay the costs of the application on the scale as between attorney and own client;
3. THAT: if reasons for the order are required, same should be requested within 10 days of this order.”

[3] I now furnish the reasons for the above order.

[4] The applicant is an attorney and insolvency practitioner and often acts on behalf of the Land Bank in collection matters. The respondent is a farmer and estate agent and has been a debtor of the bank. He was a director of a company known as Redlex 321 (Pty) Ltd which owed the bank an amount of R4 336 730-63. The company was eventually liquidated.

[5] In addition to the respondent, the applicant has handled matters involving other debtors who were not happy with the liquidation and sequestration orders against them obtained by the applicant on behalf of the bank. In the founding affidavit the applicant alleges that the respondent together with other debtors of the bank went on a smear campaign defaming him and also inciting violence against him. This was done through social media with posts on Facebook and being shared

with a number of people. In those posts the applicant is referred to as “a thief, that he plunders insolvent estates, is corrupt and/or takes part in corrupt practice by inter alia colluding with the bank, auctioneers and estate agents, he stole money from the Krion insolvent estate, is part of a cabal of insolvency practitioners, is a hangman; is involved in various scandals; is a vandal; acts in a dishonest manner by sharing in kick-backs that are apparently untoward; stations ex-32 battalion guards on properties in order to intimidate farmers to leave their farms prior to attachments

taking place; will act like a vulture and eat the last bones of Van der Merwe in order to maximize fees and commissions obtained

emanating from the disposal of assets; together with the Bloemfontein boys klub will give the Stellenbosch mafia a run for their money; is greedy and is akin to Lord Milner who burned the arable lands and crops of farmers and apparently the commander in chief of a so-called scorched earth policy against farmers”.

[6] The Facebook posts elicited comments from various people inciting violence that the applicant be shot which clearly was a direct threat on the applicant’s life. This resulted in an interim protection order being granted against the respondent on 29 June 2022 in the magistrate’s court, wherein he was interdicted from among others, harassment of the applicant, verbal abuse via electronic communication and psychological harassment. The applicant submitted that even after the service of the protection order the respondent continued to harass and defame him on social media. These defamatory statements were not made in good faith and are not supported by any evidence. This resulted in the order that was granted on 1 July 2022 against the respondent.

- [7] The Court granted a final interdict in favour of the applicant in terms of paragraph 2 of the order of 1 July 2022. Two interim interdicts were granted in terms of paragraphs 3, 4 and 5 of the said order. The argument on the return date was in relation to the interim interdicts. As stated above that paragraph 2 of the order was a final interdict, it is not of concern in this judgment. The applicant argued that the respondent has failed to comply with paragraphs 3 and 4 of the order of 1 July 2022. The applicant argued that the purpose of paragraphs 3 and 4 is to prevent ongoing defamation and harm by the respondent and people that respond to his Facebook posts. In order for the applicant to succeed with a final order, there are factors to be established being a clear right, irreparable harm and the absence of an alternative remedy.
- [8] The applicant argued that the clear right that he established is that of his reputation as an attorney and that the statements published by the respondent are defamatory and likely to injure his good reputation as an attorney. Defamation is defined as the wrongful and intentional publication of a defamatory statement concerning a person. See *Khumalo and Others v Holomisa* [2002] ZACC 12; 2002 (5) SA 401 (CC).
- [9] In *Le Roux and Others v Dey* (Freedom of Expression Institute and Restorative Justice Centre as amicus curiae) 2011 (3) SA 274 (CC) the Constitutional Court dealt with whether a statement is defamatory as follows:
- “Where the plaintiff is content to rely on the proposition that the published statement is defamatory per se, a two-stage enquiry is brought to bear. The first is to establish the ordinary meaning of the statement. The second is whether that meaning is defamatory. In establishing the ordinary meaning, the court is not concerned with the meaning which the maker of the statement intended to convey. Nor is it concerned with the meaning given to it by the person to whom it was published, whether or not they believed it to be true, or whether or not they then thought less of the plaintiff. The test to be applied is an objective one. In accordance with this objective test, the criterion is what meaning the reasonable reader of ordinary intelligence would attribute to the statement. In applying this test, it is acceptable that the reasonable reader would understand the statement in its context and that he or she would have had regard not only to what is expressly stated but also to what is implied”*
- [10] In the case of *South African Associated Newspaper Ltd and Another v Yutar* 1969 (2) SA 442 (A) it was stated that the test for determining whether a statement is defamatory is well-known: it is whether, in the opinion of the reasonable person, the words have the tendency to undermine, subvert, or impair a person’s good name, reputation, or esteem in the community.
- [11] One of the defences that can be raised in a claim for defamation is that the statement is the truth and in the public’s interest. This means that the words must be true. See: *Jonson v Rand Daily* 1928 AD 190
- [12] In this matter the respondent accused the applicant of being a thief and being involved in various scandals as stated above in paragraph

5. In response to the posts, members of the public threatened the applicant with violence and made horrific statements including racial slurs. The said statements included the following:

“Kort ‘n koeël tussen die oë;”

“Maak hom van kant, hy is ‘n landsverraaier”

“Maak hom stil die verraaier drek”

“Daar moet besoek by hom afgelê word deur ‘n aantal boere”

In addition to the above comments, the respondent made the applicant's address available to the members of the public.

- [13] It is the applicant's case that the statements made by the respondent are defamatory in nature and do cause irreparable harm to his good reputation both as an attorney and as a person. Further that he will continue to suffer irreparable harm if the interim interdicts are not confirmed as the respondent shared his posts with various people. It was submitted that the defamatory statements by the respondent have a potential of destroying the applicant's career which cannot be reversed.
- [14] The applicant is entitled to protect his reputation and not be subjected to degrading comments by the respondent. In the case of *Johan Van Greunen and Another v Hilda MC Govern Free State Division Case Number 5395/2022* (6 April 2023) by Daffue J at par 19 and 20 the following was said about disgruntled clients against attorneys and insolvency practitioners:
- “[19] In the event of conflict between two competing constitutional rights, a balancing act is to be exercised. No right is absolute and although the right to human dignity is seen as a central value and even a pre-eminent value, the facts and circumstances in each case need to be considered to establish whether the right to dignity should not be limited. I accept that people serving the public such as lawyers and insolvency practitioners, as in casu, must accept that they may be fiercely criticised from time to time by others such as creditors, disgruntled debtors and even the courts. They are not immune to criticism. In the preparation of this judgment I take cognisance hereof.*
- [20] A disgruntled client or any other person who is possessed of evidence that a legal practitioner has acted unprofessionally, fraudulently or unethically will always be entitled to lay complaints with the professional body or bodies of which such a legal practitioner is a member and with the South African Police Service in the event of criminal offences. Such a right is in the public interest, but there is an obvious limit. Nobody shall be allowed to make unfounded accusations against such a legal practitioner.”

- [15] In this matter the respondent was clearly not happy with the applicant but cannot be justified to make unfounded accusations against him. No defence was raised by the respondent and in fact he decided to comply with the order by removing the posts. The posts by the respondent are indeed defamatory as there is no evidence to prove that they are true.
- [16] The applicant approached this Court for a final interdict and interim interdicts. As stated above his right to dignity should be protected against the defamatory comments by the respondent. There is clearly no alternative remedy available to the applicant. It was submitted by the applicant that the respondent is insolvent and is unable to pay his debts. As such a claim for damages against the respondent would not assist the applicant. It is for that reason that the applicant is entitled to the interdict.
- [17] In contention the respondent submitted that after the order of 1 Jul 2022 was served on him he did comply with paragraph 2 thereof, by removing the posts on his Facebook page. As such the only issue to be determined is whether the interim order relating to paragraphs 3 and 4 should be confirmed or discharged. It was argued that it is impossible to execute the orders in paragraphs 3 and 4 as the respondent has already removed the posts and as such cannot

determine who actually commented or liked the posts. The respondent by deleting his posts does not delete his friends on Facebook who are the ones who can only comment on his posts. It cannot be argued that the respondent is unaware of his friends that he accepted on his Facebook page. He is thus able to provide their details in compliance with the order of 1 July 2022.

- [18] The respondent further argued that the order of 1 July 2022 should not have been granted on an ex parte basis as the circumstances of this case are not exceptional. However, the respondent could have anticipated the ex parte order as soon as same was served on him. This was not done. The respondent waited for the return date and in the meantime complied with the said order. The respondent had at his disposal Rule (8) and Rule 6(12)(c) of the Uniform Rules of Court. Rule 6(8) provides that 'any person against whom an order is granted ex parte may anticipate the return date upon delivery of not less than 24 hours' notice'. Rule 6(12) (c) provides that ' a person against whom an order was granted in such person's absence in an urgent application may by notice set down the matter for reconsideration of the order'. Clearly the two rules come to the aid of a person against whom an order was granted in their absence which is the case in this matter. However, the respondent chose not to invoke any of the two Rules. The applicant approached the Court on an ex parte urgent basis as a result of the nature of the comments by the respondent and the threats made against him. This was also necessitated by the fact that previously the applicant had obtained an interim protection order against the respondent and he still persisted with the Facebook posts and comments. The Court was justified on 1 July 2022 to grant the order on ex parte basis.

Costs

[19] The awarding of costs is in the discretion of the court. The applicant in this matter is successful and I see no reason why the respondent should not be ordered to pay costs of the application.

Order

[20] Consequently, the following order was made:

J T DJAJE

DEPUTY JUDGE PRESIDENT

NORTH WEST HIGH COURT DIVISION, MAHIKENG

APPEARANCES

DATE OF HEARING: 13 MARCH 2023 DATE REQUEST FOR REASONS: 14 APRIL 2023 DATE OF JUDGMENT: 08 JUNE 2023 COUNSEL FOR THE APPLICANTS: ADV V VAN NIEKERK COUNSEL FOR THE RESPONDENTS: MR W SPIES

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Prepared on 9 October 2026 · Esheria