

THE UNAUTHORISED DISCLOSURE OF HIV STATUS IS NOT DEFAMATION.

Category: Media and OTT, Privacy Law and POPIA, Privacy Law, Infosec, and POPIA
written by Kgomotso Mabena | December 5, 2025



In this case^[1] and in the *court a quo*, the respondent (“B”, a NUMSA employee), amongst others, instituted action against the appellants (NUMSA and “Zitho” in his official capacity). The action was for defamation arising from the unauthorised disclosure of “B’s HIV-positive status. On 27 February 2021, during a grievance meeting, Zitho made the following statement: “*You, Constance, told me that “B” is HIV positive and I never told anyone.*” This disclosure was made publicly, without the prior knowledge or consent of “B”. The *court a quo* upheld “B’s claim finding that the unauthorised disclosure amounted to defamation. It granted damages of R100,000.

The disclosure upset “B”, who felt betrayed and believed that the statement suggested she was a sick person who could infect others. She also worried her HIV status might negatively affect perceptions of her ability to perform her duties. Zitho subsequently apologised, and B later decided to remain employed at NUMSA.

Issues Before the Court

The respondents’ pleadings alleged that the statement made by the appellant was wrongful and defamatory. This also led the respondents to lay a charge of *crimen injuria*, which is the unlawful

impairment of a person's dignity or privacy. It was argued that the words implied "B" was a sick person incapable of performing her duties, thereby harming her *fama, corpus, and dignitas*.

Legal Principles

"B"'s cause of action was based on defamation. In [*Le Roux and Others v Dey*\[2\]](#), the Constitutional Court confirmed that the elements of defamation are:

1. The wrongful
2. Intentional
3. Publication
4. Of a defamatory statement concerning the plaintiff

Once these elements are established, the law presumes that the defendant acted with the intention to harm or injure the plaintiff. This is termed *animo iniuriandi*, and the defendant must provide evidence to rebut this presumption. They must do so on a balance of probabilities.

The central question before this court was therefore whether the statement made was defamatory of B:

The appellant Court relied on [*NM v Smith* and Others\[3\]](#), which held, "There is nothing shameful about suffering from HIV/AIDS. HIV is a disease like any other, however, the social construction and stigma associated with the disease make fear, ignorance and discrimination persistent. Living with HIV/AIDS should not be seen as a violation of one's dignity. However, it is an affront to an infected person's dignity for another to disclose that person's HIV status or other private medical information without consent."

From this, the Court concluded that the disclosure of one's HIV-positive status cannot amount to defamation. Holding otherwise would reinforce the very stigma the Constitution seeks to dismantle. Therefore, *animus iniuriandi*, which is an essential element for a claim of defamation, cannot be presumed in this instance. Therefore, the case failed on the pleadings alone.

Breach of Privacy

The Court considered whether the disclosure could constitute a breach of privacy, since unauthorised disclosure of private medical information implicates the right to privacy and dignity. The Court noted that the appellant could have possessed *animus iniuriandi* for purposes of a privacy claim.

However, breach of privacy was again never pleaded by the respondents. The Court also emphasised that defamation and breach of privacy are distinct causes of action. They are both grounded in the *actio iniuriarum*, but they must be pleaded separately. Because "B" pleaded only defamation, and not breach of privacy, the Court held that the court a quo erred in finding that the disclosure both defamed B and violated her privacy.

The Court's conclusion

"The unauthorised disclosure of "B"'s HIV status cannot amount to defamation, nor can it constitute a breach of her privacy or dignity". The findings of the court a quo were incorrect and inconsistent with "B"'s pleaded case. While the Constitutional Court in *NM v Smith*[4] recognises that the unauthorised disclosure of someone's HIV-positive status undermines dignity and infringes the right to privacy, particularly the right to control personal medical information, "B" failed to plead this cause of action.

Accordingly, the High Court upheld the appeal. It set aside the order of the *court a quo*.

Conclusion

This case highlights the critical importance of proper pleadings. It illustrates how even a clear violation of privacy and dignity can go without an effective remedy simply because the claim was framed too narrowly. Although the facts may have supported a cause of action based on privacy and dignity, the plaintiff failed to plead such a claim adequately. As a result, the court ultimately found the pleadings insufficiently broad to sustain it. Reiterating that attention to detail is critical in pleadings.

[\[1\]](#) National Union of Metal Workers of South Africa and Others v B[...] (A171/2023) [2025] ZAFSHC 337 (28 October 2025)

[\[2\]](#) Le Roux and Others v Dey (CCT 45/10) [2011] ZACC 4; 2011 (3) SA 274 (CC); 2010 (4) SA 210 (SCA) (30 March 2010)

[\[3\]](#) NM and Others v Smith and Others (CCT 69/05) [2007] ZACC 6; 2007 (5) SA 250 (CC); 2007 (7) BCLR 751 (CC) (4 April 2007)

[\[4\]](#) Ibid