A VICTORY FOR PRESS FREEDOM – “ALEX MAFIA” URGENT DEFAMATION COURT APPLICATION DISMISSED WITH A SCATHING REBUKE

Category: Media and OTT
written by Lucien Pierce | August 8, 2023



In a scathing judgment, and in a similar vein to the recent *Moti v AmaBhungane* matter upholding freedom of expression and freedom of the press, the Gauteng High Court dismissed an urgent application to “gag” a media house and its newspapers from using the term “Alex Mafia”. The applicants had applied for an urgent interim interdict to restrain the media house and its journalists from referring to them as the “Alex Mafia”. They claimed it was defamatory.

The applicants – Messrs. Sithole and Maile – complained about an article that – journalist – Adriaan Basson (Basson) had published on 22 August 2022. Mr Sithole’s affidavit, supporting the urgent application, was deposed to on 17 July 2023, almost a year later. The Judge pointed out that the issues complained of originated in 2007 and no legal action had been instituted in the past.

The applicants are friends of South Africa’s deputy president – Paul Mashatile – and have been friends for decades. Mr Mashatile at some point was a Gauteng Member of the Executive Council (MEC) for Finance and appointed both applicants to positions in Gauteng entities. The controversy that the media has written about relates to these relationships.

Basson, in his opposing affidavit, highlighted that over 16 years, there were 46 mainstream references to “Alex Mafia” and that a Google search produced 38,100 results. Basson argued that Media 24 did not coin the term “Alex Mafia” – but that it originated within the African National

Congress (ANC), Mr Mashatile's own political party. He pointed out that Mr Mashatile himself had explained the term's origin and did not seem to take offence with it (Mr Mashatile laughed about it in an interview).

The applicants had initially sought two forms of relief – preventing the applicants from being referred to as the "Alex Mafia" and preventing the repeating of "*unsubstantiated and/or unproven allegations*" from the 2007 article. They abandoned the second request for relief, essentially now only asking that the use of the term "Alex Mafia" be prohibited.

The Judge highlighted the point that, if the term "Alex Mafia" was defamatory, they should have launched legal action at least 16 years ago. The Judge also highlighted that the term was in the public domain and that the Internet was replete with the term. The Judge also pondered why the applicants had not approached the Press Council for relief, before approaching the Urgent Court.

The Judge then concluded that the urgent application "*is an abusive attempt by two politically-connected businessmen to gag a targeted newsroom from using a nickname – "Alex mafia" – by which the applicants are popularly known and called by the public, politicians, political commentators, other newsrooms, and themselves – and have been for at least 16 years. In my view, the applicants have abused the court process, by claiming urgency where there is none, by materially altering their case in reply, and by seeking relief which will have no purpose other than to improperly punish and make a chilling example of the first to seventh respondents*."

The Judge highlighted that, even in South Africa's pre-democracy era, the Appellate Division had opined that gagging and banning orders should very rarely be granted. She said that "*Against this background, the courts have set a very high threshold for an interdict (whether interim or final) against allegedly defamatory speech.*"

The Judge called the application an abuse of the court process, particularly given the short time periods the respondents were given to respond to the urgent application. The Judge highlighted that as much as the application was not a Strategic Lawsuit Against Public Participation (SLAPP) suit, it had two of its hallmarks – "*the ulterior objectives of punishment and deterrence*." The Judge also highlighted that the stratagem of citing the journalists individually supports the inference of an ulterior objective, being to punish and deter.

The application was struck from the role (dismissed) because the Judge did not regard it as urgent. She also awarded punitive costs (on the attorney and client scale) against the two.

A resounding victory for freedom of expression, freedom of the press and the right to receive and impart information and ideas. Click here for the full judgment.