

WHEN PROCEDURE SPEAKS LOUDER THAN REPUTATION

Category: Media and OTT,Uncategorized
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In the [High Court Pretoria Division\[1\]](#), the Applicant, Vusi Thembekwayo, brought an application seeking final interdictory relief against the Respondent, Sizwe Dhlomo. This sought to restrain the Respondent from posting or publishing any false or defamatory statements about the Applicant on all platforms. In addition, the Applicant requested an order directing the Respondent to remove within seven days, all false or defamatory statements made against the Applicant on such platforms, as well as a written apology with a retraction of the defamatory statements. However, the court dismissed the Applicant's application with costs due to the wrong procedure being followed.

The Respondent posted statements on social media between 2020 and 2024 that the Applicant was a 'punk and a fraud and that everything about him was a scam.' He further made statements that the Applicant was an opportunist who took advantage of the vulnerable and scammed many people. He alleged that the Applicant listened to the Respondent's radio show, which was 702 at the time, and plagiarised the content which arose from the radio show interviews. Furthermore, he accused the Applicant of physically assaulting his wife.

Following the above, the Applicant's attorneys called for retraction of the postings, an apology, and an undertaking from the Respondent to cease the further publishing of such statements on or around 11 September 2024. However, the Respondent refused to do so and informed the Applicant that he could go to hell.

Issues before the court

The court had to determine four issues, namely, whether the Applicant had met the criteria for granting a restraining order, whether the Applicant was entitled to a retraction order; whether an apology can be ordered in motion proceedings, and lastly whether the Applicant met the requirements for a final interdict on the relief sought.

The Applicant

The Applicant denied having plagiarised any of the Respondent's content and claimed that the said content was a debate among scholars and international motivational speakers, which dated back in 2012, long before the Respondent's interview. Furthermore, the Applicant pointed out that he was a public figure, with a reputation built over 22 years, and a social media following of approximately five million people. He therefore averred that the Respondent's baseless derogatory statements, which began in 2023 and continued to 2024, caused irreparable harm to his reputation, dignity and business affairs. The Applicant also averred that it sought interdictory relief and not damages claim, therefore the Respondent's reliance on defences which are only available in defamation claims were misplaced.

The Respondent

The Respondent admitted to the publishment and posting of the statements, however raised the defence that he expressed an opinion or comment, therefore the statements alleging that the Applicant was a fraud, scam, physically abusive and had plagiarised content were not unlawful. This is due to the fact that the Applicant is a public figure and comments or opinions on his integrity and character are matters of legitimate public interest, and the Applicant failed to prove that they were made with malice.

Additionally, the Applicant failed to expressly abandon his damages claim which goes against the "once and for all rule". This rule requires an applicant seeking final relief to seek all possible relief in a single proceeding. Furthermore, the Respondent alleged that an apology cannot be sought in motion proceedings. The Respondent alleged that there were material disputes of fact between the parties which the Applicant should have realised at the commencement of the proceedings. Lastly, the Respondent challenged the interdict sought by the Applicant on the basis that a court cannot interdict future specific statements that have not been proved to be unlawful.

The Court's findings

The court held that unliquidated claims must be brought by action proceedings, as a trial is required to determine the "veracity" of the alleged statements. Furthermore, it held that damages could only be determined by action proceedings and in special circumstances, after hearing oral evidence in application proceedings. It used the case of [*IRD Global Limited v The Global Fund to fight AIDS*](#)^[2] as authority where it was found that, "motion proceedings remain unsuited to dealing with defamation allegations. A trial is necessary to determine the veracity of the alleged defamatory statements, and thereafter an award can be made consisting of an apology, a monetary amount, a retraction, or a combination of same."

Additionally, the court held that it requires evidence to assess whether the posts are defamatory before it can issue an order for retraction. The above Supreme Court case has discouraged courts from making such findings based on evidence contained in affidavits. Moreover, apologies and retractions are compensatory in nature and form part of unliquidated claims. Again, emphasising the requirement for action proceedings.

Regarding the restraint order against the Respondent, the court held that the posts have already been published and are readily available on the public domain. Therefore, the prohibitory interdict will have no effect in undoing what has already occurred. The interdict prohibiting future publication of material that has already been published would also serve no purpose. To this extent the court held that, "once defamatory matter is in the public domain, an interdict is not an effective remedy but rather a form of ineffective censorship."

Additionally, the court quoted *Primedia v Speaker of the National Assembly*^[3] and held that, “prior restraint on publication is permissible only where the prejudice is demonstrable and substantial and outweighs the public’s right of access to information, mere conjecture is not enough.” As such, no facts support the likelihood of future defamatory statements about the Applicant being made. Therefore, nothing justifies the restraining order sought.

While acknowledging the different issues and defences raised, the court ultimately held that this kind of matter requires action proceedings to determine an appropriate order. The issues and defences raised may be effectively determined in motion proceedings. Therefore, the court dismissed the applications with costs.

This reiterates that the restraining and interdicts of alleged defamatory statements require oral evidence to determine the unlawfulness of the statements. In addition, the relief of an apology and retractment is unliquidated and therefore action proceedings are more appropriate for determination of such orders. This case therefore reaffirms the need to launch matters in the correct forums, as failure to do so may lead to applications getting dismissed by the court.

^[1] Thembekwayo v Dhlomo (2024/ 1485555) ZAGPPHC 667

^[2] IRD Global Limited v The Global Fund to fight AIDS, Tuberculosis and Malaria [2024] ZASCA 109; 2025)1) SA 117 (SCA) paras 24-26

^[3] Primedia (Pty) Ltd v Speaker of the National Assembly 2017 (1) SA 572 (SCA) para 50.