YOU CAN BE HELD RESPONSIBLE FOR SHARING HARMFUL OR FALSE CLAIMS MADE BY OTHERS ON SOCIAL MEDIA.

Category: Media and OTT
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In the case of Fikile Mbalula v Anele Mda, the applicant, Fikile Mbalula, Secretary-General of the African National Congress (ANC), brought an urgent interdict against the respondent, Anele Mda, who is a global speaker, panelist, TV/radio commentator, and activist, over public statements made by Mda that allegedly defamed the Secretary-General. Mda alleged, both explicitly and by implication, that Mbalula was involved in the murder of prominent businessman, Wandile Bozwana, who was shot and killed in October 2015.

The following statement was posted by Mda on X (formerly Twitter):

"*Wena, igama lakho liyavela ekubulaweni kuka Wandile Bozwana. The question still stands: what were you doing in Sandton with the guys who were driving the car that followed Wandile Bozwana, and whose occupants shot and instantly killed Bozwana in 2015, around Menlyn? Awusitsheli lokho! Kwa wena ufanelwe yijele qha*."

Moments later, she posted again:

"*Imagine doubting what Lieutenant General Nhlanhla Mkhwanazi said because Fikile Mbalula cast doubt on him. Mbalula has not yet explained why he was seen in Sandton with the occupants of the car that followed Wandile Bozwana, who was then shot at Menlyn in 2015*."

Following the publication of these statements, the High Court had to determine two main issues:

- whether the matter was urgent and satisfied the requirements for an urgent interdict; and
- whether the statements made by the respondent were defamatory as alleged by the applicant.

The Court's Determination on Interdictory Relief

In considering the interdict, the Court applied the well-established requirements for a final interdict as set out in *Setlogelo v Setlogelo*, namely:

- a clear right;
- an injury committed or reasonably apprehended;
- the absence of a suitable alternative remedy.

Clear Right

The court held that, in terms of section 10 of the Constitution, every person has the inherent right to dignity, and the right to have that dignity respected and protected. In this case, the applicant, as a prominent public figure with over 2 million followers on X, suffered and continued to suffer harm to his reputation through the widespread dissemination of the impugned statements.

Injury Committed or Reasonably Apprehended

The respondent's tweets were published to approximately 37,000 of the respondent's followers and were accessible to a much broader audience. The Court found that the posts continue to cause reputational harm for as long as they remain online and unretracted. As a public figure, father, and husband, the applicant reasonably apprehends further harm, including stigma and damage to both his personal and professional reputation.

Absence of Alternative Relief

The Court held that the interdict was the only effective remedy available to the applicant. The respondent had refused to apologise or take down the defamatory statements from her social media platforms, leaving the applicant without any other suitable legal recourse. A damages claim alone would not address the ongoing harm or prevent future publication. As all three requirements for an urgent interdict were satisfied, the Court proceeded to hear the matter on an urgent basis.

The Court's Determination on Defamation

Turning to the defamation aspect, the Court referred to Professor Jonathan Burchell's definition of defamation under the law of delict: "the unlawful, intentional publication of defamatory matter referring to the plaintiff which causes reputational harm." The online presence of both parties was a relevant consideration. The applicant's following of over 2 million, compared to the respondent's 37,000, increased the likelihood that the harmful statements would reach a large and persistent audience and cause serious reputational harm.

In its reasoning, the court relied on *EFF v Manuel*, where the Supreme Court of Appeal (SCA) emphasized: "The more serious the charge, the more the public is misinformed, and the more the

individual is harmed if the allegation is not true." The court held that the lack of factual support for the respondent's serious allegations posed a significant threat to the applicant's dignity and reputation. The applicant argued that the usual defences in defamation law, such as truth, public interest, or fair comment, were not available to the respondent, who had not produced any credible evidence in support of her claims.

The Respondent's Defence and the Court's Rejection

The respondent contended that she had not authored the claims but had merely relied on an article published by The Citizen on 29 September 2019. However, the court rejected this defence as "fallacious," noting that:

• the article merely expressed the opinion of a journalist;

• it contained no credible legal evidence linking the applicant to the crime;

• the actual perpetrators had already been arrested, tried, and convicted, with no indication of the applicant's involvement.

The Court also referred to *Tsedu v Lekota,* where the SCA held that:

"A person who repeats or adopts and republishes a defamatory statement will be held to have published the statement." This principle means that sharing or endorsing a defamatory statement, even if not originally authored by the respondent, still amounts to publication for which they may be held liable.

The Court's Conclusion

The Court found that the respondent failed to plead or prove that her statements were substantially true and thus could not rely on the defences of truth, public interest, or fair comment. The statements were ruled defamatory, as they caused serious reputational harm to the applicant, particularly given the objective evidence that the individuals responsible for Bozwana's death had already been identified and convicted. This case is a powerful reminder of a fundamental legal principle: "She who alleges must prove." In the age of social media, where damaging allegations can spread rapidly, the law holds individuals accountable not only for what they say, but also for what they choose to repeat. Freedom of expression does not protect defamation. Where allegations lack evidence, they risk infringing on another person's constitutional rights, most notably, the right to dignity and reputation.