

Summary.

CASE NO: 08/10831

In the matter between

BHEKI HAMILTON CELE

Plaintiff

And

AVUSA MEDIA LIMITED

Defendant

Defamation: The plaintiff sued the defendant for damages in the amount of R200 000, and in the alternative infringement of his dignity, arising from the publication of two articles together with a digitally altered photo of the plaintiff which was published by the Sowetan on 6 July 2007 and 16 July 2007, respectively.

The plaintiff took issue with the use of the statements “shoot to kill” and “police need to shoot all bad criminals” denying that he made these statements. The Court found that the plaintiff did make these statements.

The Court also found that the statements in the two articles read together with the altered photographic image of the plaintiff was not defamatory of the plaintiff as reasonable readers of the Sowetan would not “think less” of the plaintiff for encouraging police to take a tough stance against criminals. The Court held that the altered photographic image is a parodic representation or caricature (using elements of satire) of the plaintiff as a law enforcement official or sheriff, playfully, perhaps, from the Wild West. It held that it must not be interpreted to be a portrayal or representation of real life.

The Court also held that the altered photo image must be read in the context of the two articles, which report on the statements made by the plaintiff concerning the use of force. A further element of context that had to be considered was that the plaintiff was a public figure and politician, and had a history of involvement in law enforcement. Accordingly the Court found that the altered photo image or caricature of the plaintiff taken caption and the contents of the articles would have been understood by reasonable readers of the Sowetan to mean that the plaintiff was taking a tough stance on crime and that like a sheriff from the Wild West, he wanted criminals to be harshly dealt with by the police and brought to justice, either dead or alive. The Court accordingly dismissed the plaintiff’s claim against the defendant.

In respect of the plaintiff’s dignity claim, the Court held that the appropriate test in this case is whether a reasonable politician holding high public office would be hurt by the publication of the altered photo image. It accordingly found that a reasonable person in the position of the plaintiff would not feel hurt by the publication and that the plaintiff had failed to make a case that his right to dignity has been infringed.

The Court also found that in light of the fact that the plaintiff was a seasoned public figure and politician who regularly courted public attention and controversy on

important public interest issues such as violent crime and the appropriate response of the police to such crime, and that he has failed to prove that any of his personality rights have been violated, the publication by the defendant of the plaintiff's image (albeit altered) in the Sowetan without his consent was not unlawful.

The Court accordingly dismissed the plaintiff's claim with costs.