

REPUBLIC OF SOUTH AFRICA



**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG**

CASE NO: 13349/2019

In the matter between:

TREVOR ANDREW MANUEL

Applicant

and

ECONOMIC FREEDOM FIGHTERS

First Respondent

MBUYISENI QUINTIN NDLOZI

Second Respondent

JULIUS SELLO MALEMA

Third Respondent

JUDGMENT SUMMARY

Defamation – allegations of nepotism and corruption made against applicant – allegations relate to appointment of SARS Commissioner – publication of statement on social media – urgency – balance to be struck between the right to freedom of expression and dignity – requirements for an interdict satisfied – statement defamatory – statement presumed to be harmful – failure by respondents to prove valid defence to publication – defamatory publication not true – defence of reasonable publication applicable as social media platforms afford ordinary members of society publishing capabilities akin to that of the media – publication of defamatory material not reasonable in the circumstances – defence of fair comment dismissed as respondents could not justify the facts on which it was based – defence of publication in the public interest not applicable; must be raised in conjunction with another valid defence – interdict granted – respondents directed to retract statement and issue apology – general damages awarded.

Background

On 27 March 2019, the EFF published a statement rejecting the selection process for the SARS Commissioner on its Twitter account. In the statement, the EFF claimed that the process had been nepotistic, corrupt and contrary to the spirit of transparency and openness. The EFF further stated that Manuel was related to the SARS Commissioner who had been appointed in terms of the process, Mr Kieswetter, and that he was his close business associate and companion. This statement was retweeted by Mr Malema, and retweeted by many Twitter users.

The applicant, Trevor Andrew Manuel (Manuel), brought an application seeking the following relief:

1. A declaratory order to the effect that the statements made about him were defamatory, false and unlawful.
2. An interdict against the respondents to prevent them from making the same or similar statements in future.
3. For the statement to be removed from the respondents' media platforms.
4. For the respondents to publish an unconditional retraction and apology for the defamatory statements.
5. General damages in the amount of R500 000.

The Court

On urgency

The Court accepted that the matter was urgent, finding that the manner in which dignity was engaged rendered the matter urgent. The Court reiterated that dignity is not only a fundamental value underpinning the Constitution, but a justiciable and enforceable right that must be respected and protected. Manuel was entitled to seek immediate relief without delay, there being no reason as to why he should be submitted to further indignities before the finalisation of the matter in the ordinary course.

Furthermore, it was in the public interest for the matter to be determined, so that the country could have certainty as to whether the current SARS Commissioner had been appointed due to corruption and nepotism, as opposed to merit. It is important for South Africa's already compromised tax morality to be not to be further undermined by false allegations.

The defamation claim

The Court found that the allegations contained in the statement relating to Manuel were defamatory and that Manuel had satisfied the requirements for an interdict. He had established a clear right to dignity and reputation, and he suffered harm in both his personal and professional

life due to the widespread dissemination of the tweet containing the statement. He continued to suffer harm as the respondents had not removed the statement from social media, nor had they retracted the statement.

The Court found that an ordinary reader would have understood the tweet to mean that Manuel is corrupt and nepotistic; that he conducted the appointment process in secret in order to disguise his relationship with Kieswetter; that he is connected to the 'white capitalist establishment'; and that he acts against the interests of SARS. This clearly lowers Manuel's reputation in the opinion of the public, as the tweet implies that he is dishonest, unscrupulous and lacking in integrity.

The respondents failed to provide any facts to support the truth of the allegations made in relation to Manuel. They argued that they had received the information from a confidential source, and that it was reasonable for them to publish the allegations on Twitter. This was because they had concerns about the selection process, and, having exhausted all other avenues, sought to have these concerns debated more robustly in the public domain. The concerns that the EFF and its members had previously voiced regarding the selection process related to a lack of openness and transparency – and not to Manuel's relationship with Kieswetter. Thus it did not justify the publication of the allegations on Twitter as a last resort.

The Court dismissed the argument that as Manuel was acting in the political sphere, he would have to withstand criticism more than an ordinary private individual. The Court stated that a public office bearer is entitled to dignity and to not have their reputation unlawfully harmed.

Defences

The respondents raised a number of defences to the publication of the defamatory material, all of which were rejected by the Court.

- The respondents could not rely on the defence that the statement was true and published in the public interest. That particular allegations referring to Manuel had no basis in fact. The fact that Manuel had an employment relationship in the past with Kieswetter was not sufficient in itself to establish a reasonable apprehension of bias. Even if the respondents believed the allegations at the time they were tweeted, this would not absolve them of liability, as any person who repeats a defamatory allegation is treated as having made the allegation himself. Furthermore, the statement remained on social media even though the respondents knew that the allegations made against Manuel were not true; the defence could not be raised in the face of a blatant publication of false material.
- The respondents raised the defence of 'reasonable publication', a defence ordinarily relied on by the media. The respondents stated that they had acted akin to a whistle-blower, playing a public-disclosure roll that would normally be played by the media. The Court acknowledged

that the increased use of social media platforms provides ordinary members of the public with publishing capacities (which can be even more far-reaching than print and broadcast media) and therefore there is no reason why the defence of reasonable publication should only extend to the press and not to the individual. The respondents failed to take reasonable steps to verify the defamatory allegations and did not provide Manuel with an opportunity to respond to the allegations before publication. The defence was dismissed.

- The defence of 'fair comment' was also dismissed. In this regard, the respondents failed to justify the facts upon which their comments were based. Furthermore, the refusal to retract the statement, even after acknowledging that it was not true, demonstrated that the respondents acted with malice.
- The respondents argued that the statement related to a matter of public interest, and that it was justifiable as it increased the public scrutiny of SARS. The Court rejected this argument, stating that the mere fact that a statement related to an issue of public interest, was no defence to the publication of defamatory material.

ORDER:

1. The allegations made about the applicant, Trevor Andrew Manuel, in the statement titled 'The EFF Rejects SARS Commissioner Interview Process' dated 27 March 2019 are defamatory and false;
2. It is declared that the respondents' unlawful publication of the statement was, and continues to be, unlawful;
3. The respondents are ordered to remove the statement, within 24 hours, from all their media platforms, including the first and third respondents' Twitter accounts;
4. The respondents are ordered, within 24 hours, to publish a notice on all their media platforms, on which the statement had been published, in which they unconditionally retract and apologise for the allegations made about the applicant in the statement.
5. The respondents are interdicted from publishing any statement that says or implies that the applicant is engaged in corruption and nepotism in the selection of the Commissioner of the South African Revenue Service.
6. The respondents are ordered jointly and severally to pay damages of R500 000.00 to the applicant.
7. The respondents are ordered jointly and severally to pay the applicant's costs on an attorney and client scale.

Coram: Matojane J

Heard: 14 May 2019

Delivered: 30 May 2019