REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG LOCAL DIVISION, JOHANNESBURG

CASE NO: 30011/2019

(1) REPORTABLE: ~~YES~~ / NO
(2) OF INTEREST TO OTHER JUDGES: ~~YES~~/NO
(3) REVISED.

10/09/19 .....

Date **ML TWALA**

In the matter between:

UNIVERSITY OF LIMPOPO	**APPLICANT**
AND	
eNEWS CHANNEL AFRICA (PTY) LTD	**FIRST RESPONDENT**
STATION MANAGER OF eNEWS CHANNEL (PTY) LTD	**SECOND RESPONDENT**
eTV (PTY) LTD	**THIRD RESPONDENT**

JUDGMENT

TWALA J

[1] In this application which served before the urgent Court on the 27th of August 2019, the applicant sought an order against the respondents in the following terms:

I. Condoning the applicant's non-compliance with the rules relating to time periods, service and forms and that Part A be disposed of as urgent in terms of rule 6(12) of the Uniform Rules of Court;

II. Pending the final determination of Part B of this application, it is ordered that:

1. The respondents are interdicted and restrained from publishing and or broadcasting and or showing in any manner, on any of their platforms, the next episode of the programme called "Checkpoint", in which it is alleged that the applicant offers or offered bogus and or unaccredited and or unrecognized academic qualifications and or courses and or certificates,

III. Ordering any of the respondents who oppose Part A of this application, jointly and severally, to be liable for costs occasioned by such opposition, including the costs of two counsel; alternatively in the event of Part A being unopposed, that the costs associated with Part A be costs in cause for determination by the Court hearing Part B of this application;

IV. Further and or alternative relief.

[2] Although there were time constrains, the respondents filed their opposing papers based on the concessions made by the applicant and the indulgence of the Court. For the sake of convenience, I propose to refer to the applicant and respondents in this judgment.

[3] At the commencement of the hearing counsel for the respondents raised the issue of urgency and the locu standi of the deponent to institute these proceedings on behalf of the applicant. Due to the nature of the matter before me, I did not entertain the issue of urgency and allowed argument on the merits.

[4] On the issue that the deponent does not have authority to institute these proceedings on behalf of the applicant, I am satisfied that the deponent is an executive of the applicant and that the body tasked with the administration of the applicant, the Senate, has delegated its power to the deponent to litigate on behalf of the applicant.

[5] It is appropriate at this stage to mention that there is no plausible reason for me to elaborate on the prayers of Part B of the applicant's notice of motion since the applicant did not succeed with Part A of the application. Due to the pressure of time as the flighting or broadcasting of the programme Checkpoint was to take place the same evening of the 27th August 2019, I made an order dismissing the application with costs including the costs occasion by the employment of 2 counsel with my reasons therefore to follow. This judgment is meant to furnish my reasons for the order I made in this case.

[6] The genesis of this application is the complaint received by the first and second respondents from the students who attended courses offered under the auspices of the applicant advertised as *"12 months Learnership and Certificate Programme in Funeral Parlour, Medical and Hazardous Waste Management 2018/2019"*. The complaint was that these courses are worthless and the resultant certificates are of no value because the courses were not accredited and or registered learnerships.

[7] Advocate Ferreira submitted that, there were no untruths or falsities in the content of the programme to be broadcast by the respondents. It was contended that, after having interviewed 4 of the students who attended the courses and having considered the e-mails they had sent to the applicant and the Sector Education and Training Authority (SETA), on the 25th July 2019 and the 13th of August 2019 the programme producer of the respondents, Ms Mbuzwana, conducted interviews with the representatives of the applicant including the Vice Chancellor who deposed to the founding affidavit in these proceedings about these learnership courses. She further interviewed the CEO of the South African Qualifications Authority (SAQA), corresponded with the Council for Higher Education (CHE) and the brand manager of the (SETA), Ms Mvelase.

[8] It was contended further that, Ms Mbuzwana telephoned Prof. Hyera who was alleged to have run the courses but hung up immediately after he heard that Ms Mbuzwana was calling from eNCA and she was unable to get hold of him again. She then spoke to Prof. Ambe who was also allegedly involved in the running of the courses. She contacted the environmental consultant linked to the courses Burnie Nawn and the Health Professions Council of South Africa

(HPCSA) which knew nothing about the course. She contacted the Limpopo Department of Health which was said would absorb the learners but it knew nothing about the course. The Department of Higher Education and Training was also contacted as well as Umalusi which issues accreditation certificates to private institutions. She further correspondent with the CSIR, in particular its Department of Science and Technology, to see if it was involved in any way with the development of waste management qualifications in South Africa.

[9] Advocate Ferreira submitted further that there is enamours public interest in the broadcast since public funds in the sum of R42m has been expended. The applicant is a public institution and has not put up any real evidence that it faces prejudice and serious damage to its name if the broadcast were not interdicted. Should the applicant suffer any prejudice, so it was contended, an action for damages is capable of vindicating the applicant's reputation. As things stand, the risk of reputational damage to the applicant is speculative and an anticipatory ban is not necessary.

[10] Advocate Mpofu SC submitted on behalf of the applicant that the Court should grant an interdict against the respondents who are to flight a programme which contains falsities and untruths about the applicant who has 60 years standing as a good university in the RSA. The allegation that the applicant offers and or conducts bogus or unaccredited and or unrecognised academic qualifications and or courses and certificates is false and it puts the applicant in a bad light. The broadcast of the programme will cause irreparable harm to the good name of the applicant. It is correct that these courses are not registered with the SAQA and the CHE because the functions

of accreditation of Short Term Programme (STP) has been delegated to the Senates of the University. The Senate of the applicant has appropriately accredited the programme.

[11] It is unfair, defamatory and damaging the good name of the applicant, so the argument went, for the respondents to lump the applicant with other institutions which are said to be bogus or the fly by night type when it is offering courses which are supported by the SETA which has allocated an amount of R42m for full bursaries to students, payment of facilitators, hiring of venues and preparation of course material. It was contended further that the words "learnership and pitch or pitched" were used loosely in the advertisement where it was stated that at the end of the learnership programme the course is pitched to an NQF 5 qualification and it was never intended to mislead the public. For a student to be admitted to the course, so it was argued, had to have an NQF4 qualification – hence the course itself was pitched at an NQF5 qualification but was not meant to be an NQF5 qualification.

[12] It is a trite principle of our law that a publication will be unlawful and susceptible to being prohibited only if the prejudice that the publication might cause to the administration of justice is demonstrable and substantial and there is a risk that the prejudice will occur if the publication takes place. It is further trite that Courts will be reluctant to abridge the freedom of the press where the publication is of enamours benefit to the public and outweighs the prejudice to be suffered by the other.

[13] To put matters in the right context, I propose to mention certain sections of the Constitution of the Republic of South Africa, 108 of 1996 which provide as follows:

"Freedom of Expression

Section 16

1) Everyone has the right to freedom of expression, which includes-

a) Freedom of the press and other media;

b) Freedom to receive or impart information or ideas;

c) .....

Limitation of rights

Section 36

1. The rights in the Bill of Rights may be limited only in terms of law of general application to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom, taking into account all relevant factors, including –

a) The nature of the right;

b) The importance of the purpose of the limitation;

c) The nature and extent of the limitation;

d) The relation between the limitation and its purpose; and

e) Less restrictive means to achieve the purpose.

2. Except as provided in subsection (1) or in any other provision of the Constitution no law may limit any right entrenched in the Bill of Rights;

[14] The Skills Development Act, 97 of 1998 provides as follows:

> *"Section 1*
>
> *Definitions:*
>
> *Learnership programme includes a learnership, an apprenticeship, a skills programme and any other prescribed learning programme which includes a structured work experience component:*
>
> *Section 16*
>
> *Learnerships*
>
> *A SETA may establish a learnership if –*
>
> *a) The learnership includes a structured learning component;*
> *b) The learnership includes a structured work experience component;*
> *c) The learnership would lead to a qualification registered by the South African Qualifications Authority associated with a trade occupation or profession; and*
> *d) The intended learnership is registered with the Director-General in the prescribed manner.*

[15] I do not understand the respondents to be saying that the applicant is a bogus university offering or conducting bogus courses and certificates. The respondents are to publish or broadcast a programme the contents whereof will inform the public that the applicant has misrepresented in its advertisement of the courses it was offering as learnerships programme when it was not. The applicant has failed to disclose in its advertisement that these are short term

programmes accredited only by the Senate of the university and not learnerships programme as provided for by the Skills Development Act and or accredited by the CHE and that they do not lead to any qualification as they are not registered with SAQA. Instead, the applicant created an impression that these are learnerships programme which are pitched to an NQF 5 qualification.

[16] I agree with counsel for the respondents that the public is entitled to know how the public institutions like the applicant conduct themselves and how they utilise the public purse. Freedom of the press is meant to serve the interest that all citizens have in the free flow of information. To abridge the freedom of the press is to abridge the rights of all citizens and not merely the rights of the press itself. The respondents have conducted extensive research and interviewed all relevant stakeholders on the courses being offered by the applicant as learnerships programme and were informed that they are not accredited or recognised learnerships programme as envisaged in the Skills Development Act neither were they accredited by the CHE. The deponent to the founding affidavit was also interviewed but could not clear the controversy on these courses and or certificates.

[17] It is on record that the R42m funding from the SETA was meant for full bursaries for the students, the hiring of venues, for payment facilitators and courses' material. These courses were offered to vulnerable young children who have left school and have no jobs. In an effort to improve their qualifications to secure better employment they found themselves caught in these courses – hence the complaint that these courses are of no value as they are bogus and or not accredited by the relevant authorities. Such information

is of utmost importance and interests for the public to know. I am of the respectful view therefore that, the content of the programme to be broadcasted by the respondent cannot be said to be false and or untrue to warrant curtailment from publication.

[18] In *Midi Television (Pty) Ltd t/a E-TV v Director of Public Prosecutions (Western Cape) [2007] (5) (SCA) SA* the Court stated the following:

> *"para 19 In summary, a publication will be unlawful, and thus susceptible to being prohibited, only if the prejudice that the publication might cause to the administration of justice is demonstrable and substantial and there is a real risk that the prejudice will occur if publication takes place. Mere conjuncture or speculation that prejudice might occur will not be enough. Even then publication will not be unlawful unless a court is satisfied that the disadvantage of curtailing the free flow of information outweighs its advantage. In making that evaluation it is not only the interests of those who are associated with the publication that need to be brought to account but, more important, the interests of every person in having access to information. Applying the ordinary principles that come into play when a final interdict is sought, if a risk of that kind is clearly established and it cannot be prevented from occurring by other means, a ban on publication that is confirmed in scope and in content and in duration to what is necessary to avoid the risk might be considered."*

[19] I am unable to disagree with counsel for the respondents that there is no reputational damage that the applicant will suffer due to the publication and broadcast of content of its programme Checkpoint on this matter. If any

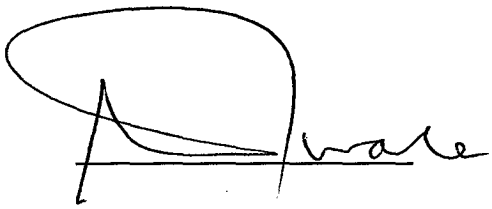
reputational damage is to be suffered by the applicant, it is minimal that it is outweighed by the interests of every person entitled to have access to the information. I am therefore satisfied that the advantage of allowing the free flow of information, especially with regard to the conduct of public institutions utilising the public purse, like the applicant, outweighs the disadvantage of curtailing it.

[20] It is trite that the requirement for an interdict are for the applicant to establish that it has a prima facie right, which right must be threatened with irreparable harm and the lack of a satisfactory remedy.

[21] I am of the considered view that the applicant has failed to establish that it does not have a satisfactory remedy in due course should the publication or broadcast be false and cause reputational damage to its name. The applicant has a remedy in that it can institute an action for damages – thus the application for an interdict falls to be dismissed on these basis.

[22] In the circumstances, I make the following order:

The application for an interdict is dismissed with costs including costs occasioned by the employment of 2 counsel.



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JUDGE OF THE HIGH COURT OF SOUTH AFRICA

GAUTENG LOCAL DIVISION

Date of hearing:	**27th August 2019**
Order handed down:	**27th August 2017**
Full Judgment:	**10th September 2019**
For the Applicant:	**Adv. D Mpofu SC** **Adv. NC Motsepe**
Instructed by:	**Motalane Inc** **Tel: 012 362 6502**
For the Respondents:	**Adv. N Ferreira** **Adv. I Cloete**
Instructed by:	**Rosengarten & Feinberg** **Tel: 011 486 0242**