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

CASE NO: 2023 - 101760

(1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO

26/10/2023
DATE

[redacted]
SIGNATURE

In the application by

NISAMOSEKI TRADING ENTERPRISE (PTY) LTD trading as NISA WILLCKX INTERIORS	Applicant
and	
SHOZI, SITHOLE	Respondent

JUDGMENT

MOORCROFT AJ:

Summary

Defamation – interdict – automatically removed from social media platform – fear of re-publication – interdict granted

Order

[1] In this matter I make the following order:

1. *The respondent is interdicted and restrained from*
   1.1. *repeating the defamatory statement quoted in the Instagram post annexed to the founding affidavit as "FA5"*
   1.2. *referring to the applicant and its business as a "fraudulent" business, operation or manufacturer.*
2. *The respondent is ordered to pay the costs of the application.*

[2] The reasons for the order follow below.

[3] This is an application launched in the Urgent Court to interdict the publication of defamatory material on social media. I am satisfied that the application was of a sufficiently serious and urgent nature to justify a hearing in the Urgent Court.

[4] The applicant is a company carrying on business as a furniture manufacturer; the respondent is described as a *'social media influencer'* in the founding affidavit. The description is not denied in the answering affidavit.

[5] The respondent ordered furniture from the applicant in terms of an oral contract and a dispute arose when the applicant insisted on a lead time for manufacture and delivery of six to eight weeks while the respondent insisted on delivery within a shorter time frame. The applicant agreed to refund the purchase price. However, the respondent posted on Instagram:

"PLEASE BE WARNED

Don't make the mistake of ever ordering any pieces from this fraudulent furniture operation."

[6] The words are clearly *per se* defamatory and no other meaning was suggested. In the absence of any context the reader is not in a position to evaluate the weight to be attached to the statement. The post elicited numerous negative comments on social media and there is no dispute that publication of the comment took place. It is stated on the respondent's Instagram page (which is not in dispute) that she is followed by a million people and the inference is that publication took place to many people, many of whom reacted. Responses ranged from *"So Sithole Shozi almost got scammed by this Instagram furnsher shop."* to *"Mayor says y'al are fraudulent."*

[7] Some of the people who commented resorted to language so gross that I do not see any need or justification to quote the comments in this judgment. The gross language was not used by the respondent but was used by those who 'follow' her on Instagram and who responded in this unacceptable manner to the defamatory material.

[8] The applicant complains that a number of its clients had expressed reservations about doing business with the applicant again. The applicant says that the business suffered reputational harm because of the defamatory remarks.

A business enterprise may be entitled to protection against defamation by way of an interdict.[1]

[9] The post was subsequently removed and the evidence is that posts stay on Instagram for only a 24-hour period and are then removed automatically. It was argued on behalf of the respondent that *'the horse has bolted'*[2] and that the applicant cannot show a reasonable apprehension of continued harm if an interdict were not granted. It is also argued that the applicant has an alternative remedy, namely damages.

[10] Damages will be difficult to prove and publication of defamatory material generates continuous harm. Under those circumstances I am not satisfied that a possible claim for

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1 *Halewood International South Africa (Pty) Ltd v Van Zyl and another* 2023 JDR 1011 (GJ) paras 28 to 31, and the authorities referred to in footnotes 1 to 5.

2 See *Tsichlas and Another v Touch Line Media (Pty) Ltd* 2004 (2) SA 112 (W).

damages provide a suitable alternative remedy.[3] The possibility of damages at some future point in time to a business being hurt now by defamatory remarks, provides cold comfort.

[11] There is no tender from the respondent not to publish any further defamatory statements on social media or otherwise. When the software used on a social media platform is such that material published disappear automatically after a set period the *'horse has bolted'* argument does not mean that a respondent may defame his or her victim with impunity, safe in the knowledge that the victim will not be able to prove a reasonable apprehension of future harm because by the time the matter comes to court, the offending material had disappeared into the thin air of cyberspace.

Social media platforms enable individuals to reach many people easily and quickly, and with the power to influence others should come the obligation to act responsibly and cautiously when it comes to the rights of others. An ordinary person armed with a cellphone and Internet access can reach more people today than a King with his armies two thousand years ago.

[12] The respondent admits publication of the defamatory material and adopts the view that she was entitled to publish the post. She states that the post is not defamatory. The respondent relies on the defence that the post was true and in the public interest,[4] and therefore not unlawful.

The onus to prove the defence is on the respondent.[5] I pause to state that the the so-called Plascon-Evans[6] rule applies and that the rule is not affected by the onus.

[13] The statement made by the respondent does not permit any reader to form an objective opinion and it does not serve to protect the interests of the public. It is a bald allegation of fraud made on the basis of disputed facts as to oral or tacit terms of a

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3 See the authorities quoted by Van Loggerenberg *Erasmus: Superior Court Practice* vol 2, D6-16B and footnotes 152 to 154.

4 See the discussion by Kinghorm 'Defamation' in *The Law of South Africa* vol 7, 2nd ed. 2005, para 247.

5 See *National Media Ltd and others v Bogoshi* [1998] 4 All SA 347 (A) and *Khumalo and Others v Holomisa* 2002 (5) SA 401 (CC).

6 *Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd* 1984 (3) SA 623 (A) 634C to 635B and *Wightman t/a JW Construction v Headfour (Pty) Ltd and Another* 2008 (3) SA 371 (SCA) para 12.

contract.

[14] I am satisfied that the applicant has a clear right in its good name, that it has no other suitable remedy, and that it has a reasonable apprehension of harm in the event that the defamatory remarks are again published by the respondent.

In the answering affidavit the respondent points out that she has *"not said anything about the applicant since I published the statement"* and there was an opportunity to simply state that publication will not be repeated. The opportunity was not taken.

[15] I will therefore interdict the future publication of the offending and defamatory statement. The relief sought in the notice of motion is over-broad[7] and in the order I make is aimed at the offending statement. The respondent has now sought legal advice in preparation for this matter and will be in a position to take a more informed decision when deciding on social media posts.

[16] For the reasons set out above I make the order in paragraph 1.

J MOORCROFT
ACTING JUDGE OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION
JOHANNESBURG

Electronically submitted

Delivered: This judgement was prepared and authored by the Acting Judge whose name is reflected and is handed down electronically by circulation to the Parties / their legal representatives by email and by uploading it to the electronic file of this matter on CaseLines. The date of the judgment is deemed to be **26 OCTOBER 2023**.

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7 *RM v RB* 2015 (1) SA 270 (KZP) paras 21 to 29 and *Halewood International South Africa (Pty) Ltd v Van Zyl and another* 2023 JDR 1011 (GJ) paras 28 to 31.

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INSTRUCTED BY:	MARWESHA ATTORNEYS
DATE OF ARGUMENT:	18 OCTOBER 2023
DATE OF JUDGMENT:	26 OCTOBER 2023