



THE SUPREME COURT OF APPEAL
REPUBLIC OF SOUTH AFRICA

MEDIA SUMMARY – JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

From: The Registrar, Supreme Court of Appeal
Date: 17 September 2009
Status: Immediate

**MAANDA MANYATSHE
and
M & G MEDIA LIMITED
FERIAL HAFJEJEE
STEFAANS BRUMMER
SAM SOLE
MEDIA 24 LTD
NICHOLAS DAWES**

APPELLANT

**FIRST RESPONDENT
SECOND RESPONDENT
THIRD RESPONDENT
FOURTH RESPONDENT
FIFTH RESPONDENT
SIXTH RESPONDENT**

Please note that the media summary is intended for the benefit of the media and does not form part of the judgment of the Supreme Court of Appeal

On 17 September 2009 the Supreme Court of Appeal dismissed an appeal by Mr Maanda Manyatshe (the appellant) against a decision of the Johannesburg High Court, refusing his application for an urgent interdict against the publication of an article in the Mail & Guardian newspaper which he alleged was defamatory of him. The respondents include the owner, the editor and two journalists of the Mail & Guardian.

From 1999 until October 2004, the appellant was the chief executive officer of the SA Post Office Ltd. At the time of the application for an interdict in September 2006, he was the chief executive officer of MTN South Africa (Pty) Ltd. The impending article which he sought to prevent related to his time at the Post Office. It came to his notice when he was presented, shortly before publication, with a questionnaire from two journalists, containing serious allegations to which he was invited to respond.

In broad terms the story suggested by the questionnaire began with the allegation that the Post Office Board had laid criminal charges against the appellant and other entities, including Mr Geoffrey Mabote, a former senior official of the Post Office and

a company trading as Vision Design House. According to the questionnaire the criminal charges originated from a tender process which started when the Post Office invited tenders for the 'New Image' upgrading of its retail outlets all over the country. Though nineteen bidders were attracted, Vision Design House was not amongst them. Nonetheless, Vision Design House was appointed as project manager without a tender process to commence with the refurbishing of a whole series of New Image pilot sites. These appointments, so it was alleged, were driven by the appellant and Mr Mabote. In the process, so the story went, various deviations from the normal tender procedure were motivated by the Mabote and approved by the appellant. In fact, so the questionnaire contended, the appellant and Mabote were so concerned to have Vision Design House appointed that they misrepresented facts to the Post Office Board and ignored procedure. 'In general', so the questionnaire went, 'the Post Office alleges that that Messrs Manyatshe, Mabote, Vision Design House [and others] . . . acted in concert as part of a deliberate scam to perpetrate a massive fraud' on the Post Office. When the appellant resigned as chief executive officer of the Post Office in October 2004, so the questionnaire concluded, the matter was already under investigation.

The appellant declined the invitation to comment. Instead, he launched the urgent application for an interdict. As to the contents of the questionnaire the appellant essentially contented himself with the rather bald and general assertion that 'the allegations in the questionnaire relating to me are untrue, unfounded and irresponsible'.

From the Mail & Guardian's answering papers it emerged that the contents of the questionnaire derived from an affidavit deposed to by the appellant's successor as chief executive officer of the Post Office, Mr Mampeule. The affidavit had been filed in the Pretoria High Court in response to a civil claim by Vision Design House against the Post Office. A copy of the affidavit was annexed to the respondents' answering papers. A further document annexed to the respondents' papers incorporated the findings in a disciplinary enquiry against Mr Mabote. Although these disciplinary proceedings did not relate to the appellant directly, many of the allegations in Mampeule's affidavit were supported by these findings.

In the Johannesburg High Court Snyders J found that the intended publication would indeed be defamatory of the plaintiff. She also found, however, that the respondents

had set out a sustainable factual foundation for their defence of truth and public benefit. Essentially, her reasons for this conclusion appeared to be that, while the allegations in the questionnaire and the draft article was supported by the affidavit of Mr Mampeule and the findings in the disciplinary enquiry against Mr Mabote, they were met by no more than bald denials on the part of the appellant. She also found that the balance of convenience favoured the respondents. In consequence, the application for an interdict was refused.

Subsequent to the refusal of the interim interdict, the article which the appellant sought to prevent was indeed published. In this light, the respondents raised the preliminary contention that the appeal is moot, in that its outcome will have no practical impact, and that it should for that reason alone be dismissed with costs. As the legal basis for their preliminary contention the respondents relied on s 21A of the Supreme Court Act 59 of 1959. The principle that underlies s 21A, so the SCA held, is in effect that courts of law exists for settlement of live, concrete controversies and not to pronounce on hypothetical or abstract questions of law. It further held that on the facts of this case the appeal had indeed become moot in that it no longer constituted any concrete controversy. Moreover, so the SCA held, the appeal did not raise any important questions of law which are bound to arise again. In the circumstances the SCA could find no basis on which it could exercise the discretion bestowed upon it by s 21A, to decide the merits of a case which will have no practical effect.

In the result the appeal was dismissed with costs in terms of s 21 A.