



THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

MEDIA SUMMARY OF JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

FROM The Registrar, Supreme Court of Appeal
DATE 5 June 2011
STATUS Immediate

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Media 24 v SA Taxi Securitisation
(437/2010) [2011] ZASCA 117 (5June 2011)

Media Statement

Today the Supreme Court of Appeal (SCA) delivered judgment upholding the appeal by Media 24 and the other appellants against the judgment of the South Gauteng High Court dismissing the appellants' special plea against a defamation action instituted by the SA Taxi Securitisation (the respondent). Four *amici curiae* only became involved on appeal. They had as their object the protection of the right to freedom of expression, in general, and freedom of the press in particular. At their behest, they were allowed to present argument, both written and oral, as part of the appeal proceedings.

The respondent is a finance company that provides financial assistance to purchasers and lessees of taxis. An article published in the City Press under the title 'Taxi owners taken for a ride by finance body' was highly critical of the way in which the finance body referred to in the article conducts its business. The respondent's case is that the finance body referred to would be understood by the readers as relating to it. This is denied by the appellants. The respondent contended that the article was defamatory of it and on these grounds it claimed general damages in an amount of R250 000 as well as special damages in the form of lost profits in an amount exceeding R20 million.

The appellants filed a document containing a special plea and a plea on the merits. The special plea challenged the respondent's right to obtain either general or special damages under the law of defamation. For general damages, so the appellants contended, the respondent has no claim at all in defamation, while its claim for special damages is not available under the *actio iniuriarum*, from which the action for defamation derives, but only under the *actio legis Aquiliae*.

With regard to special damages, the court unanimously held that a plaintiff who seeks to recover patrimonial loss resulting from a defamatory statement must allege and prove the

elements of the *Aquilian* action. The court held that the respondent's case as formulated in its particulars of claim, lacked an essential averment, namely that the defamatory statements relied upon were false. To that extent the special plea should therefore succeed.

Turning to the question of whether the company could claim general damages the majority of the court held, after having regard to the relevant case law, that it had consistently been accepted by courts that corporations, both trading and non-trading, had a right to their good name and reputation which is protected by the usual remedies afforded under our law of defamation, including a claim for general damages. Even though the arguments against the award of damages in cases such as these were weighty and of substance, for reasons of policy, the majority was not persuaded, in the absence of new arguments, that policy should change. The position would be different, the court held, if our common law, in this context, were found to be in conflict with constitutional principles.

On the constitutional argument the court was left unpersuaded that the recognition of a corporation's claim for general damages in defamation constitutes an unjustified limitation to freedom of expression and held that the reputation of a corporation is worthy of protection. A proper balance needs to be struck between the right to freedom of expression and the right of a corporation to its reputation.

The majority also noted that the only remedy open to a person (or corporation) who has suffered an infringement of a personality right is a claim for damages, as one cannot sue for an apology. As long as this situation remains, a court cannot recognise that a corporation has a reputation worthy of protection under the law of defamation, but hold that the remedy should be something other than damages.

The majority thus held that there was no legitimate reason why the common law rule that a corporation has a claim for general damages in defamation actions should be deviated from.

Nugent JA, in a dissenting judgment differed from the majority in their finding that a trading corporation, like a natural person is entitled to general damages if it is unlawfully defamed. He takes the view that it is open to the court to reappraise the remedies for defamation and that remedies other than damages are capable of vindicating its reputation. Awarding general damages to a trading corporation is, according to Nugent JA, inherently punitive and thus not permitted in our law, and that it must follow that it is also an unjustified intrusion upon the right to free expression.

Snyders JA concurring in the majority judgment and agreeing with Nugent JA in part noted that the court should be disinclined, at the appeal stage, to deny the respondent general damages as a possible remedy as the point had not been raised by the parties to the litigation and as the court had not had the benefit of having the issues fully ventilated before it as to the appropriateness and availability of alternative remedies.

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