



**THE SUPREME COURT OF APPEAL  
REPUBLIC OF SOUTH AFRICA**

**MEDIA SUMMARY – JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL**

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*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.*

**MODIRI v THE MINISTER OF SAFETY AND SECURITY**

The Supreme Court of Appeal (SCA) today partly upheld an appeal by Mr Mogale Modiri (the appellant) against an order of the Free State High Court dismissing his action for defamation against the Minister of Safety and Security and Superintendent Adam Wiese (the police respondents), and the editor, the owner, the publisher and the journalist of the Daily Sun newspaper (the media respondents) with costs. It ordered the media respondents to pay the costs of the appellant in the SCA and substituted the costs order of the high court with an order that the media respondents should pay the costs of the police respondents in the high court.

The appellant had instituted a defamation action against the police respondents in the high court as a result of defamatory statements concerning him in an article which had appeared in the Daily Sun. The statements were that the readers of the Daily Sun in the Bloemfontein area were asked to help the police in catching the appellant who was allegedly involved in

drug dealing, cash-in-transit heists and car theft, and that the police's problem in catching him was that he used other people to do his dirty work for him. The article ascribed these statements to Superintendent Wiese. Following upon the police respondents' denial in their plea that Wiese had ever made the statements ascribed to him in the article, the appellant sought and obtained leave of the high court to join the media respondents as defendants in the action. In their plea the media respondents relied on, amongst other things, truth and public benefit as a defence against the action.

The evidence on behalf of the police respondents had established that prior to the publication of the impugned article, there had for more than ten years been suspicion on the part of the police, including the Scorpions and the National Intelligence Agency (NIA), that the appellant was involved with armed robbery, vehicle theft and drugs and that he was a leader of a syndicate involved in these crimes. The evidence further established that the actual perpetrators identified the appellant as one of their leaders but were unwilling to testify against him in court. As a result of this unwillingness to testify against him, charges against the appellant had to be withdrawn. Wiese denied in evidence that he had ever invited readers of the Daily Sun to assist in the apprehension of the appellant. He said that the statement could only have come from the journalist who wrote the article. The media respondents closed their case without presenting any evidence.

In dismissing the action, the high court found that no criticism could legitimately be levelled against the witnesses who testified on behalf of the police respondents. It further accepted that Wiese had never made the defamatory statements that were ascribed to him in the impugned article. As to the media respondents, the high court upheld the ground of justification of truth and public benefit that they raised.

Before the SCA the appellant accepted that the high court had correctly dismissed his action against the police respondents but contended that it should have ordered the media respondents to pay their costs. His contentions as to why the high court had erred in upholding the media respondents' defence of truth and public benefit were threefold. First, that the media respondents had not led any evidence in rebuttal of the presumption of

wrongfulness. Second, that the inaccuracies in the article precluded any reliance on the defence under consideration. And third, that the media respondents could not rely on the information of the appellant's alleged criminal activities testified to by the police witnesses, because it had not been demonstrated that the article was based on that information.

The SCA held in respect of the first contention that the high court had erred in upholding the media respondents' defence, that the elements of the defence-(lack of) intention and wrongfulness-could be established on the basis of facts not deriving from the defendant's own witnesses. The failure by the media respondents to call any witnesses, the SCA held, did not automatically preclude them from relying on the defence of truth and public benefit. In respect of the second contention the SCA held that the high court had rightly found that the gist of the article was objectively true. It further held that those allegations that proved to be untrue were not part of the sting of the article. The media respondents, the SCA stated, were not required to prove that the defamatory statements were true in every detail. The SCA held in respect of the third contention that once the media respondents had established that the sting of the article was true, it mattered not where the information relied upon by the journalist came from. It further held that publication of the suspicion held by the police was for the public benefit and that the appellant could not insist on enjoying the reputation of an honest businessman who is beyond any suspicion, which he did not or ought not to possess. The SCA also held that, the publication of the suspicions against the appellant could serve the purpose of persuading members of his community to come forward with potential evidence against him which the police eagerly sought. The fact that the police did not actually ask the journalist to invite public assistance did not detract from this possibility. In substituting the costs order of the high court, the SCA held that it was the untrue version of the media respondents, that ascribed the defamatory statements to the police, which led to the involvement of the police respondents in the action and the costs resulting from that involvement. The fact that publication of the defamatory statements in the end proved to be justified, the SCA stated, provided no excuse for the media respondents' reliance on an untrue version. Finally, in ordering the media respondents to pay the appellant's costs of appeal the SCA held that the fact that the appellant's success on appeal was limited did not mean that he was not substantially successful which meant that

the appellant was entitled to his costs on appeal.