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REPUBLIC OF SOUTH AFRICA

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

Case Number: 14182/2021

REPORTABLE: NO
OF INTEREST TO OTHER JUDGES: NO
REVISD. NO

In the matter between:

THEMBA MBONGENI NKOSI
(Identity Number: [...])

Applicant

And,

NONTSIKELELO MAZWAI
(Identity Number: [...])

Respondent

JUDGMENT

FISHER J:

Introduction

[1] This is part B of an application launched in two parts by the applicant on 23 March 2021. Part A of the application was dealt with in the urgent court before Wright J and an order was granted on an interim basis pending the final

determination of part B. In essence the matter involves comments disseminated on social media which are alleged to be about the applicant and defamatory. The applicants now seeks a final interdict preventing further defamatory utterances on social media and generally.

Background

[2] The applicant is currently unmarried and the father of five children aged, seven, five, three, three, and one years old. He is a public figure, more commonly known as *DJ Euphonik*, and is well known in the radio and television industry. He currently has 210 000 followers on Instagram and is active and enjoys a prominent presence on social media. He makes his living in the music industry and his social media presence is part of the marketing of what refers to as his 'brand'.

[3] The respondent holds herself out as a musician, poet, and human rights activist who is well known for her role in campaigning against gender-based violence in South Africa. At the time that part A was heard the respondent had 14 200 *Instagram* followers and 269 700 *Twitter* followers. Both *Instagram* and *Twitter* are dominant international social media platforms.

[4] On 11 March 2021, the respondent retweeted (i.e. republished on the platform) a post *Twitter*) a message purportedly posted by an entity with the *Twitter* 'handle' (i.e.an identifying nom de plume) - *Women For Change*. The original tweet (i.e. a term for a message posted on the media platform) urged certain DJs to not perform with the applicant to 'show every survivor of Gender Based Violence' their 'respect and support.' the tweet included the hashtag sign (a manner of signposting a topic on *Twitter* and other media platforms) **#muteeuphonik**.

[5] On the same day, the Respondent posted the following message on *Twitter*:

' If you wanna see the other rapists watch who is rallying behind other rapists...'
'When djs put each other on lineups its like an an invitation to rape the groupies party ...'

[6] The respondent was then asked her thoughts on the DJ known as *Black Coffee* booking the applicant in the line-up for his birthday party. In response she retweeted a post by an entity with the handle '*What's Hot Africa*' which read 'birds of a feather flock together'. The applicant alleges that this is a reference to certain unproven allegations contained in acrimonious divorce proceedings in which *Black Coffee* is involved.

[7] On 12 March 2021, the respondent tweeted the following post:

'There is now an event on Sunday with a known rapist and a known domestic abuser on the lineup. And you will rally and clap hands like a bunch of monkeys who can't tell right from wrong.'

'A gig with predators and violent men in the lineup. Nice.'

Discussion

[8] Whilst it appears that the Respondent has purposefully attempted to avoid directly naming the applicant, the only reasonable inference to be drawn from her various posts is that her comments/statements are directed, inter alia, at him.

[9] Any person who has substantial social media following and who is able, as a consequence thereof to reach out to and influence, a large community of people, as the respondent is able to do, is required to ensure that they exercise temperance and responsibility in the dissemination of public posts. More importantly, the respondent ought to ensure that her public statements are based and founded in truth and in fact.¹

[10] What one observes here is a garnering by the respondent of resources in the form of her influence in the public media to create a string of posts which when read together reveal that she is spreading a rumour to the effect that the applicant is a sexual predator and as such should be 'muted' in the industry and not allowed to appear on line-ups for music events. The test for determining whether the words in

¹ See: *Manuel v Economic Freedom Fighters and Others* 2019 5 SA 210 GJ at paras 61 to 72.

respect of which there is a complaint have a defamatory meaning, is whether a reasonable person of ordinary intelligence might reasonably understand the words concerned to convey a meaning defamatory of the litigant concerned.²

[11] The posts are on an application of this test clearly defamatory.

[12] Publication of a defamatory statement is prima facie wrongful and the onus rests on the Respondent to dispel the prima facie case.³

[13] The respondent denies that the tweets are defamatory. They do, however, speak for themselves and this contention is rejected. Counsel for the respondent was unable to tender any alternative and non-defamatory meaning as to the tweets.

[14] It is raised also by the respondent that there is a material non-joinder in that the entity 'Woman for Change'. There is no merit in this submission. Indeed, it is not even clear that such an entity exists.

Costs

[15] The respondent is no stranger to this type of litigation. She has already been restrained from making similar public statements under Case Number 16531/2020, which pertains to another DJ.

[16] Furthermore, she had costs awarded against her on a punitive scale in part A of this application. She was also afforded an opportunity by the applicant's attorneys to redress and cease her conduct prior to the launching of the application. She stubbornly elected not to do so and rather has proceeded to defend the matter. It is clear that she doggedly defends her position without any cogent basis. Her behaviour in relation to this litigation borders on the contemptuous.

² *Mthembi-Mahanyele v Mail & Guardian Ltd and Another* 2004(6) SA 329 (SCA) at para 25.

³ *Neethling v Du Preez* 1994 (1) SA 708 (A) at 769 —780; *National Media Ltd v Bogoshi* 1998 (4) SA 1196(SCA).

[17] The platforms for social activism in the realm of Gender Based Violence must not be abused. The irresponsible use of such platforms inure to the detriment of this important movement for change and does not assist.

[18] In the circumstances the respondent is directed to pay the costs of part B of the application on the scale as between attorney and client.

Order

[19] I thus make an order in terms of the draft which appears at 074-5 of Caseline

**FISHER J
HIGH COURT JUDGE
GAUTENG LOCAL DIVISION, JOHANNESBURG**

Date of Hearing: 19 January 2022.

Judgment Delivered: 10 March 2022.

APPEARANCES:

For the Applicant : Adv M Nowitz.

Instructed by : Schindlers Attorneys.

For the Respondent : Adv P Seseane.

Instructed by : Stephina Motlhamme Attorneys.